C. P. No. 4.

SEPTEMBER, 1878. No. 564.

EVERITT

vs.

HALE, *et al.*

REPORT

OF

C. STUART PATTERSON,

Master.

The Chandler Printing House, 306 & 328 *Chestnut St., Philad'a.*

ELISHA E. EVERITT	C. P., No. 4.
vs.	SEPT. TERM, 1878.
HENRY S. HALE, *ET AL.*	No. 564.

The Master to whom this cause was referred by the interlocutory decree, made on 8th December, 1878, respectfully reports that he held sixty-nine meetings after due notice, on 18th December, 1878 and sundry other days up to and including 10th August, 1880, at which he was attended by Wendell P. Bowman, esq., and E. Coppee Mitchell, esq., of counsel with the plaintiff, James Otterson, esq., of counsel with defendants, and by the parties in person. The testimony of witnesses was taken, and a type-written copy of the stenographic report thereof is filed herewith. The cause was fully argued by the counsel above named.

The bill, which was filed by Elisha E. Everitt, on 24th September, 1878, makes Hale, Kilburn & Co., and the Hale & Kilburn Manufacturing Co., parties defendant, and avers that on 24th March, 1874, a patent was issued to the plaintiff for an improvement in wardrobe bedsteads, that on 16th April, 1874, the plaintiff entered into a contract in writing with Hale, Kilburn & Co., which is set out in the bill, whereby

it was, *inter alia*, stipulated that his patent should be assigned to them, and that they should pay him $500, should use all reasonable efforts to promote the sale and introduction of his patented bedsteads, should pay him a royalty upon all of said patented bedsteads made and sold by them, at the rate of 7 per cent. upon the wholesale prices received by them therefor, and also one-half of the net profits of the sale of rights and licenses under the plaintiff's patent, and to keep full accounts, etc., and to account and pay over at the end of each month, and that if in default for 60 days after demand of payment, Hale, Kilburn & Co. should forfeit all interest in the letters-patent and should re-assign the same, any improvements in said bedsteads and patents therefor to be held and enjoyed by Hale, Kilburn & Co., under and subject to the terms of the contract. The bill further averred that on 3rd October, 1876, the Hale & Kilburn Manufacturing Co. succeeded Hale, Kilburn & Co., and became assignees of the patent and contract, that defendants have made and patented improvements on the plaintiff's patent, and have made and sold bedsteads under the patent and its improvements, for which they have not accounted to the plaintiff, that the defendants have refused to account or pay, that they have refused plaintiff access to their books, that they are more than 60 days in default, and that, to defraud plaintiff, they have bought the patent of one Stark, and, as an excuse to hinder and defraud plaintiff, have caused a suit to be brought in the name of Stark to enjoin their use of plaintiff's patent.

The bill prays:—

1.—An account of all and every the bedsteads and other furniture manufactured by the defendants under said patents and improvements, and of all moneys realized from sales thereof, and a decree for payment of such sum as shall be found due the plaintiff.

2.—A re-assignment of said patent and improvements and rights thereunder.

3.—An injunction to restrain defendants from disposing of the patents and improvements, and from manufacturing or selling thereunder.

4.—General relief.

The Answer, which was filed 22nd November, 1878, and amended 10th December, 1878, admits the averments of the bill as to the plaintiff's patent, the contract with Hale, Kilburn & Co., the succession of the Hale & Kilburn Manufacturing Co., to, and their substitution for Hale, Kilburn & Co., submits whether their patents are for improvements to the plaintiff's patented process, denies that plaintiff has been refused access to the books, or that defendants have failed to account, and annexes an account to the answer, showing a balance due to the plaintiff, admits that defendants are in default in payment to the plaintiff, offers to re-assign the patent, avers that they secured the control of the Stark

and Maine patents in good faith and with the plaintiff's knowledge, and charges that plaintiff's patent is void for want of novelty and utility. The answer then submits to a decree in favor of the plaintiff, except under the second prayer of the bill.

The Interlocutory Decree was made 10th December, 1878, after a hearing on bill and answer, and directs—

1.—A reference to the Master to take an account of all and every the bedsteads and furniture manufactured after 16th April, 1874, under the patent and improvements referred to in the bill.

2.—An injunction as prayed for.

3.—A reference to the Master "to take testimony "upon the matters contained in the second prayer of "the bill, and to report same and the facts relating "thereto, and a further decree," etc.

The Amendment to the Bill which was allowed on May, 1879, avers that there was such a relation between plaintiff and defendants that the latter could not, "during the existence thereof, acquire title to said Stark's patent adversely" to plaintiff, and prays that the defendants be decreed to assign to plaintiff Stark's patent and all rights thereunder.

The interlocutory decree of 10th December, 1878, directs the Master "to take an account of all and every "the bedsteads and furniture manufactured by defend- "ants, under the patent and improvements referred to "in the bill, after 16th April, 1874."

The defendants, by the second article of their contract with the plaintiff, bound themselves "to keep just "and true books of account * * * showing "the number of said patented bedsteads made and sold "by them, and the prices received therefor, and show- "ing also all rights and licenses granted under the pat- "ent, and the amount received therefor," and to pay to the plaintiff "a royalty or patent fee upon all of the "said patented bedsteads made and sold by them, at "the rate of 7 per cent. upon the wholesale prices re- "ceived by them therefor," and also, "one-half of the "net profits which they may derive from the sale of "any rights and licenses in and under said letters- "patent," and "to account for in writing and to pay over "such sums as may be due * * * at the end of "each and every month from and after the date" of the contract, *viz.*, 16th April, 1874.

There was no subsequent verbal modification of that provision of the contract.

By the second paragraph of their answer the defendants admitted their liability to account, and annexed thereto:—"An account of all the bedsteads sold under the said patent since their last account was rendered." They averred that the said "account was accepted by

"the said plaintiff, without objection, and the last pay-
"ment to the said plaintiff was made in pursuance of
"said account and a mutual settlement between them
"on that subject."

The account, as annexed to the answer, showed net sales amounting to $4,732 34, and royalty due the plaintiff thereon, amounting to $331 26.

The interlocutory decree, by its direction to the Master to state the account of all the bedsteads and furniture manufactured after 16th April, 1874, would seem to decide adversely to the defendants, as to their averment of an account stated and settled between them and the plaintiff, down to July 1878, but, if the interlocutory decree were silent as to this, the Master would still be compelled to find that there has been no such statement or settlement of accounts, for the evidence shows clearly that from time to time, since the beginning of their business relations, the defendants have made certain payments on account, to the plaintiff, which were received and receipted for by him, but there has not been between the parties such a statement and settlement of accounts as a Court of Equity would regard as sufficiently final and conclusive to bar a further accounting.

At the meeting of 23rd January, 1879, before the Master, the defendants produced four separate accounts, as follows:—

No. 1.—An account of sales by defendants of bedsteads they supposed they were making under the plaintiff's patent, from September 4, 1874, down to and

including October, 1878, showing in all $6,341 07 royalty due plaintiff.

No. 2.—An account of the sales included in former accounts rendered to plaintiff in person, and upon which the defendants paid royalty as they claim, by mistake, showing an alleged overpayment of royalty amounting to $463 46.

No. 3.—An account of further sales made by defendants of the articles they claimed to be exempt from royalty, but which had not been hitherto accounted for except in their answer, showing royalty amounting to $472 03.

No. 4.—A statement of the payments made by the defendants to the plaintiff on account of royalty since the signing of the contract, and amounting to $6,080 10.

Mr. Owen D. Roberts testified that these several accounts were prepared by the defendant, H. S. Hale, and that he, Mr. Roberts, had compared them with the books and found them correct, with certain exceptions specified on page 130 of the testimony, which showed a further sum of $64 08 to be due to the plaintiff by way of royalty. But, on page 184, Mr. Roberts explains that he had not verified all the items of the account for whose correctness he vouched.

The plaintiff employed Mr. Frederick L. Hoffman, a competent and experienced mercantile accountant, to make an examination of the books of the defendants, and extract from them a statement of the account showing the defendants' sales under the patent and

improvements, and the amount of royalty due to the plaintiff. That detailed account, ("*Exhibit 5*,") was put in evidence on the plaintiff's behalf before the Master, and shows sales by the defendants amounting to $215,639 20, upon which it was claimed the defendants ought to pay royalty. The defendants objected to Mr. Hoffman's account, and Mr. Roberts, their book-keeper, pointed out alleged errors amounting to $17,956 85, which the defendants claimed should be deducted from the total sales charged against them. They also contended that Mr. Hoffman's account was altogether unreliable. The books of account, as kept by the defendants, were produced under the plaintiff's call, and put in evidence, and, among those books was "Exhibit 10," the defendants' account of their sales of bedsteads, as prepared for the plaintiff's inspection.

As preliminary to the stating of the account, certain questions must be passed upon. The defendants, by their contract with the plaintiff, bound themselves to pay a royalty "at the rate of seven per cent. upon the wholesale prices received by them therefor." The defendants contended that they were entitled, under this provision of the contract, to deduct from the wholesale prices received by them or their agents thirty-three and a third per cent., in order to make what they termed the net wholesale price upon which the plaintiff's royalty was to be calculated; and they based this claim upon their practice in billing goods to their branch stores at a discount of thirty-three and a third per cent. Mr. Roberts states this on pages 147, 155, 173, and 206 of the testimony. (*See also* "*Exhibit 10.*")

On page 210 of the testimony, Mr. Roberts admitted that all sales to furniture dealers were wholesale sales, whether one or more articles was sold at a time.

It is clear that the defendants were bound to account not for the actual price received, but for the wholesale price,—and that the wholesale price meant the price at which the particular article was or would be sold to a wholesale dealer buying from them. The transactions between the defendants in Philadelphia and themselves in New York, or between the defendants in Philadelphia and their agents in Baltimore, Boston or Chicago, which were simply consignments at nominal prices, can furnish no fair rule for the establishment of the wholesale price; but this is put beyond question by the defendants' price lists and discount sheets. Exhibits 8, 9 and 29 show that the defendants fixed their wholesale trade prices at ten per cent. discount, and five per cent. extra for cash.

The Master would, therefore, in stating the account, charge the defendants with the actual price admitted by them to have been received where the transaction appeared to have been on a wholesale basis, and with ten per cent. less than the actual price received where the transaction appeared to have been a retail one, but as the plaintiff, in his claim, ("*Exhibit 5*,") submits to an uniform discount of ten per cent., the Master has made that deduction from the total sales.

It was, in the next place, contended by the defendants that they were not bound to account for anything more than the mere frame of the bedsteads sold by them; that the springs were not an essential and in-

tegral part of the bedsteads manufactured under the plaintiff's patent, and that they were not bound to account to him for any royalty upon the springs. It is, perhaps, sufficient to say upon this point, that the bedstead without springs would not be in a fit condition for the reception of a mattrass, because the bottom of the bedstead is a board, which would not bear the weight of a mattrass. The defendants' price lists, (*Exhibits 6, 7, 12, and 13,*) show that they advertised that none of the plaintiff's bedsteads were sold without springs; and the testimony of most of the witnesses, expert and others, shows, and the Master finds, that the springs were an essential part of the bedstead as such, and that a peculiar form of springs was manufactured for the plaintiff's bedstead.

A question was also made in regard to the liability of the defendants to account for bedsteads finished with mirrors, or with ebony stripes. The contract fixes the royalty, not at a precise sum per bed, but at a percentage upon the price received therefor. This obviously looked to a variance in styles and finish of bedsteads, and a difference in the price to be received therefor. A bedstead would not be any the less a bedstead under the plaintiff's patent, because it had a mirror instead of a wooden front, or an ebony instead of a walnut finish. The Master, therefore, holds that the defendants are bound to account for all bedsteads made by them under the plaintiff's patent, however finished and ornamented, and for the springs.

Certain minor questions were raised with regard to some of the details of the account. The defendants

charged the plaintiff with $162 50, for fees paid in August, 1874, to Messrs. Collier, Harding, and H. W. Beadle & Co., for opinions upon this patent with regard to the plaintiffs' non-infringement upon the Maine patent, and they sought to justify this charge under Article 4 of the contract, whereby the plaintiff bound himself to defray "one-half of the expenses of any suits "at law or in equity that it may be necessary to prose-"cute or defend for the maintenance of said letters pa-"tent, or to enjoin and recover against the infringers "thereon." This provision of the contract furnishes no justification for the charge. There is no evidence to show that the plaintiff agreed to pay for those opinions. For these reasons, that charge is disallowed.

The defendants also charge the plaintiff with certain disbursements, amounting to $58 50, with regard to the Centennial stand. The plaintiff did not agree to those disbursements, and that item of charge is, therefore, disallowed.

The plaintiff claims from the defendants one-half of certain sums for royalty received from different parties. The second article of the contract bound the defendants to pay "one-half of the net profits which they "may derive from the sale of any rights and licenses "in and under said letters-patent."

The defendants' accounts admit their receipt of those sums as claimed, and the testimony of Mr. Roberts, (*page 157,*) supports the plaintiff's claim. The Master has, therefore, charged the defendants with one-half of the sums so received.

The plaintiff's claim, as made by the account prepared

the end of each month, from the weekly returns from the different branch stores, an account was obtained of the goods that were actually sold at those stores, and by a Journal entry that amount was transferred from the Merchandise Consignment account to the regular Merchandise Sales account.

The defendants appear to have consigned goods to their New York store and agencies at certain rates of discount, varying from thirty-three and one-third to forty-three per cent. The New York store accounted to the Philadelphia store for the actual price at which the goods were sold; but the agencies appear to have accounted to the defendants for the billed price, and to have been allowed to retain any profit over and above the billed price.

In stating the account, the Master has, in the first instance, taken Exhibit No. 5 as containing a detailed statement of the items of sales by the defendants, upon which the plaintiff claims royalty. He has compared that account, item by item, with Exhibit 10, and Exhibits 1, 2, 3, and 4. He has treated the items in the last named five Exhibits as constituting admissions by and against the interest of the defendants, and, when unexplained, as furnishing proof that the particular sale to which the item refers was made, but he has referred in every possible case to the book of original entry for the price at which the sale was made. In some instances it has not been possible so to refer, because the defendants' Exhibits 1, 2, 3, 4, and 10, do not always give the needful reference. The plaintiff's Exhibit 5 contains some duplicated entries. The Mas-

ter has endeavored to eliminate all duplicates. He has marked, in Exhibit 5, with a red cross, every item that he has charged against the defendants, and with a red O, every item that he has rejected. He has marked, in Exhibit 10, with a red tick, each item that he has found in Exhibit 5. He has charged the defendants with every item marked in Exhibit 5 with a red cross, and also with every item in Exhibit 10 not marked with a red tick, and wherever his examination of the original entry of any sale has required an alteration of the price stated in Exhibits 5 or 10, he has noted in red ink the price as found by him.

The Master has stated the prices realized by the sales in New York from the weekly returns from the defendants' New York store, and not from the invoices thereto, making deductions for mattrasses.

The statement of the account, upon the principles and methods indicated, has necessarily been a slow and laborious process. Its difficulty has been largely increased by the manner in which the defendants have kept their books. It was their duty, under their contract with the plaintiff, to keep "just and true" accounts, showing their sales and the prices received therefor, in detail. This they have not done, but, on the contrary, they appear to have systematically confused the record of their sales under the contract, so as to unlawfully increase their profits and diminish the plaintiff's royalty, and they have, in their several accounts, as stated for the Master, persistently understated the actual prices realized from their sales, and they have omitted some sales.

The Master annexes hereto, marked "Exhibit A.," a detailed account, showing the date and amount of each sale with which he has charged the defendants, and with a reference for each item to the defendants' books.

There is no record in the defendants' books, and no evidence in the cause, that the defendants have manufactured any bedsteads under the plaintiff's patent, other than those which they have sold.

The contract requires the defendants "to pay over "such sums as may be due * * * at the end of "each month." The Master has, therefore, stated, (*and annexes, marked "Exhibit B.,"*) an account charging the defendants with their several monthly totals of royalty, and crediting them with their several payments on account, and debiting and crediting them with interest to the date of the interlocutory decree.

Upon the account so stated, the Master finds and reports that there is due by the defendants to the plaintiff the balance stated therein.

The interlocutory decree of 10th December, 1878 directed the Master "to take testimony upon the mat- "ters contained in the second prayer of the bill, and "to report the same and the facts relating thereto "and a further decree."

The second prayer of the bill is "that the said de- "fendants be ordered to re-assign to your orator the

"said letters-patent of your orator, and all improve-
"ments thereon, and all rights to use said patented in-
"vention under said agreement."

The amendment to the bill avers that there was such a relation between the plaintiff and the defendants that the latter could not, "during the existence thereof, "acquire title to said Stark's patent adversely to plain-"tiff," and prays that "the defendants be decreed to as-"sign to the plaintiff Stark's patent and all rights there-"under."

Under the terms of this reference the Master reports the following facts:—

The plaintiff is the inventor of a folding wardrobe bedstead, that is to say, a bedstead so constructed that when not in use as a bed, it can be folded up and present the appearance of a wardrobe. The peculiarity of the plaintiff's invention appears to be a hinged foot-board in combination with side brackets raised above the side rails, and forming, when the bed is elevated, the side guards for the pillows and bed-clothing.

On nineteenth November, 1873, the plaintiff filed, in the Patent Office of the United States, his petition for letters-patent for an improvement in wardrobe bedsteads. His application was rejected on twenty-second November, 1873, again on third December, 1873, and again on twelfth December, 1873, and as grounds of rejection the Patent Office Examiner referred to prior patents supposed to cover the same subject matter, granted on August twenty-second, 1865, to A. Stark; on fifteenth June, 1865, to S. C. Maine; on sixth Sep-

tember, 1870, to Davis & Romminger, and on twenty-eighth May, 1872, to H. Goodrich. The objections of the Examiner were, however, overcome by successive amendments to the specifications of claim, and on twenty-fourth March, 1874, letters-patent were granted to the plaintiff, numbered 148,940, and specifying the invention as hereinbefore set forth.

Mr. Daniel Connolly was the plaintiff's patent solicitor, and, as such, filed his petition and the subsequent amendments of the specifications which were necessitated by the successive rejections of the application. Mr. Connolly necessarily had notice of the reasons upon which those rejections were based, and of the existence of the several prior patents referred to by the Patent Office examiner, including the Stark patent. Notice to Mr. Connolly was of course notice to his client, the plaintiff, who, whether he did, or did not, in fact know, must be conclusively presumed to have known of those prior patents.

On 16th April, 1874, the plaintiff entered into a written contract with the defendants, Hale, Kilburn & Co., which is set forth in full in the bill. That contract was drawn by the Messrs. Howson, solicitors employed by the defendants. In the making of that contract the parties thereto dealt at arms' length. There was no relation of confidence between them, and the maxim *caveat emptor* applies. Mr. Henry Howson, then the defendants' learned and competent adviser in patent law, was clearly of this opinion, for he testified, on page 281 of the testimony, that he scolded Mr. Kilburn for signing the agreement with the plaintiff without

previously having an examination made into the state of the art, and he then had a search of the Patent Office records made by his Washington clerk. That search dated 17th April, 1874, (the day after the date of the contract, "*Ex. 55*,") states that the plaintiff's patent had been rejected on reference to the patents of Davis & Romminger, H. Goodrich, and S. C. Maine, but makes no mention of the Stark patent. Nevertheless the clerk's report was notice to Mr. Howson, and, therefore, notice to his clients, the defendants, that the plaintiff's patent had been rejected, and that the reasons for the rejection were on file in the Patent Office. If the defendants had inquired they would then have learned of the existence of the Stark patent, and they would doubtless have concluded at that time, as they did at a later date, "that the Stark patent was not really of it-"self available, that is, it could not be a saleable article "as it stood;" (*H. S. Hale's testimony, p. 242,*) and "that "the plaintiff's patent did not infringe upon the Stark "patent as it had been originally granted." (*Mason's testimony, p. 525*).

There is nothing to show that the plaintiff, as an inducement to the making of the contract, made any representation to the defendants in regard to the existence or nature of prior and subsisting patents for the same or a similar subject matter.

The defendants, after Mr. Howson's search had been made, caused the contract to be recorded, on twentieth April, 1874, in the Patent Office, in Liber T., p. 443, of Transfer of Patents.

The eighth paragraph of the answer avers:—

"That prior to the making of the said contract with "the said plaintiff, these defendants had no knowledge "or information as to the existence of the said Maine "and Stark patents, or either of them, but they are in- "formed and believe that the said plaintiff did know of "their existence, as they have been informed and be- "lieve that his application for his patent was originally "rejected at the patent office by reason of the exist- "ence of the one or the other, or both, of the said prior "patents, but the plaintiff failed to communicate such "facts to these defendants; and the defendants aver "that because of the existence of prior patents, and for "want of utility and novelty, they have been advised "that the said patent of the plaintiff is useless and ut- "terly worthless, and that their said contract with him "is without consideration and void in law."

The interlocutory decree having directed the defendants to account under the contract, it would seem that it is not, at this stage of the cause, open to them to set up, by way of defence, the alleged invalidity of the contract as resulting from fraudulent concealment or misrepresentation on the part of the plaintiff, or from want of consideration.

But, if the question were open, it must be held that the prior rejection of the plaintiff's patent cannot affect its validity as subsequently granted. All of the patent solicitors who were called in the case, Messrs. Howson, Connolly, Holloway and Mason, agreed in testifying that it is not unusual for an application to be rejected several times before it passes the ordeal of the Patent Office. Apart from that, it is clear that a patent, when

granted, is *prima facie* evidence of the novelty and usefulness of the invention, and that State Courts have not jurisdiction to determine as to the validity of a patent, or to decide a question of infringement. (*United States Act of 4th July, 1836, paragraph 17; 5 Statutes at Large, page 117; Revised Statutes of the United States, Section 711.*)

It may also be said that that averment of the answer is scarcely consistent with other public and private expressions of the defendants' opinion of the plaintiff's patent. In their advertisement in the Public Ledger of 3rd October, 1874, ("*Ex. 21,*") they announce that they will display at the Franklin Institute "their new "parlor bedstead and crib, made upon an entirely new "principle," and they add:—"This has been acknow-"ledged by experienced and competent judges to be "superior to any other folding bed ever invented." In their descriptive circular of 1st September, 1876, ("*Ex. 13,*") they say "The Champion," (meaning thereby the plaintiff's bedstead,) "heads the list of folding bedsteads, and cannot be approached by any." In their circular of 10th September, 1878, ("*Ex. 12,*") they say that the bedstead manufactured under the plaintiff's patent and their improvements is "beautiful in appearance;" "simple but durable in construction;" "easy to manipulate," and "the most perfect thing of its kind in existence." They also add that the first folding bedstead made by the defendants "in the fall of 1874, was considered a model of ingenuity and mechanical skill." In the defendants' advertisement in the Philadelphia Record of 29th March, 1879, ("*Ex. 23,*") they claim

for the bedstead the "only Centennial award." In their advertisement in the same Journal, on twenty-fourth January, 1880, ("*Ex. 69,*") they say, "entire world "challenged. Warranted the best. Nearly five thou- "sand in use." In their letter of twenty-seventh February, 1878, to their patent solicitors, D. P. Holloway & Co., ("*Ex. 77,*" *p. 508,*) they say, "we must get clear "from Everitt, if possible, and we prefer not to alter "the bed, if it can be avoided." In their letter of twenty-eighth February, 1878, ("*Ex. 78,*" *p. 509,*) to Mr. Mason, a member of the firm of D. P. Holloway & Co., they say, "the bed is just splendid, as it is." In the face of these declarations, the defendants cannot now be heard to object that the plaintiff's patent is lacking in "utility and novelty."

By the contract it was, *inter alia,* stipulated that the plaintiff's patent should be assigned to the defendants, that they should pay him five hundred dollars, should use all reasonable efforts to promote the sale and introduction of his patented bedsteads, should pay him a royalty upon all of said patented bedsteads made and sold by them, at the rate of seven per cent. upon the wholesale prices received by them therefor, and also one-half of the net profits of the sale of rights and licenses under the patent, should keep full accounts, etc., should account and pay over at the end of each month, if in default for sixty days after demand for payment, should forfeit all interest in the letters-patent, and should re-assign the same to the plaintiff, and, any improvements in said bedsteads and patents there-

for should be held and enjoyed by the defendants under and subject to the terms of the contract.

In August, 1874, the defendants took the opinion of Charles B. Collier, Esq., and, through George Harding, Esq., the opinion of H. W. Beadle & Co., patent solicitors, in Washington, and were advised by those gentlemen that the plaintiff's patent did not infringe upon the Maine patent. (*Exhibits 45 and 46.*)

Shortly after the execution of the agreement with the plaintiff, the defendants appear to have begun the manufacture of his beds, and their first sale was made in the month of September, 1874.

On the third of October, 1876, the Hale & Kilburn Manufacturing Company, also a defendant, was organized, and was thenceforth successor to, and substituted for, Hale, Kilburn & Co.

The account, as stated by the Master (*post* "*Exhibit A.*,") shows the amount of the defendants' sales under the plaintiff's patent and their contract with him.

The defendants appear to have made regular monthly payments on account of his royalty, until January, 1877, when they demanded and he refused to give receipts in full settlement to date, and during some portion of the period before 1877 the plaintiff seems to have been in their debt, according to their statement of the account. In July, 1877, the defendants refused to pay royalty on certain styles of bedsteads, which they distinguished as Nos. 10 and 11, although the bedsteads so numbered were marked as being made under the plaintiff's patent. They afterwards paid royalty on these bedsteads, and wrote to

the plaintiff on eleventh October, 1877, withdrawing their objections. ("*Ex. 76.*") From that time until April, 1878, the royalty, to the amount admitted by the defendants, seems to have been paid with regularity.

The second article of the contract bound the defendants "to keep just and true books of account, to "be open at all reasonable times to the inspection" of the plaintiff, "showing the number of said patented "bedsteads made and sold by them, and the prices re-"ceived therefor, and showing also all rights and "licenses granted under the patent, and the amount "received therefor."

The defendants attempted to comply with this provision of the contract by keeping a book for the plaintiff's inspection ("*Exhibit 10,*") into which were copied from time to time, by the defendants, such entries from their books of original entry, as, in their opinion, the plaintiff was entitled to see. But the plaintiff was not permitted at any time to have access to the defendants' books of original entry. From the account as furnished to the plaintiff, the defendants omitted the springs, which are an essential part of the bedstead, and the bedsteads finished with ebony or mirrors, they understated the prices realized by their sales, and they made an uniform and unauthorized deduction by way of discount from the wholesale prices actually received by them. The account so stated to the plaintiff's prejudice was the basis on which the defendants estimated, and made payments on account of his royalty.

The sixth article of the agreement between the plaintiff and the defendants stipulated:—

"That the said patented bedstead shall be known as "'The Everitt Bedstead,' and the said parties of the sec- "ond part (the defendants) shall so term it in their ad- "vertisements, circulars, etc."

The defendants appear to have persistently violated this article of their agreement. In their price list of thirtieth July, 1877, ("*Exhibit 6*,") they mention "The Champion Folding Bedstead and Crib," patented twenty-fourth March, 1874; tenth February, 1875; twenty-second August, 1876; nineteenth September, 1876; and in very small type they also give the article so advertised the name of "The Everitt Bedstead." In "Exhibit No. 7, their price list of tenth September, 1877, they advertise "The Champion Folding Bedstead and Crib," and make no mention of the plaintiff. In their advertisement in the "*Trade Bureau*," of twenty-second March, 1879, they describe "The Champion Folding Bed," but omit the mention of the plaintiff's name; and so also in their advertisement of fifteenth March, 1879, in the "*American Cabinet Maker*." In their advertisement of third October, 1874, in the Philadelphia "*Public Ledger*," they state that they will display at the Franklin Institute, their new parlor bedstead and crib, made upon an entirely new principle, and they omit all mention of the plaintiff's name. So also in the "*Fair Messenger of the Baptist Home*," of twenty-seventh October, 1877; so also in the "*Philadelphia Record*," of twenty-ninth March, 1879; so also in the "*Trade Bureau*," of twelfth April, 1879; so also in the "*American Cabinet Maker and Upholsterer*," of thirteenth May, 1876.

The plaintiff does not, in this proceeding, seek any remedy for the defendants' violation of contract with regard to the non-advertisement of his name as the inventor of the bed; but that action upon the part of the defendants is relevant and material in this controversy as evidence of a purpose upon their part to appropriate to themselves the benefit of the plaintiff's invention, and is very consistent with their treatment of the plaintiff in other respects.

As the sales of the bedstead increased, and the amount of the plaintiff's royalty grew in like proportions, the defendants seem to have formed the purpose of compelling his reduction and ultimate relinquishment of even the unfairly diminished royalty which they then allowed him. In July, 1877, the defendant, C. Kilburn, asked the plaintiff to reduce his royalty from 7 to 3½ per cent., and, on his refusal, Mr. Kilburn threatened that the defendants would stop the manufacture, or make only enough to hold the bed, and keep others from making it.

On fourth November, 1875, one Asher B. Stevens, a mechanical inventor, had entered into a written contract with Hale, Kilburn & Co., ("*Exhibit No. 66*,") whereby, *inter alia*, it was stipulated that Stevens should devote so much of his time and energies as said Hale, Kilburn & Co. may deem desirable to the perfection and full development of such inventions and improvements as they may desire an interest in. In the Summer of 1877, the same Mr. Cheney Kilburn, told Stevens that the defendants were paying a heavy royalty on the plaintiff's bed, and directed him to get up a new bedstead.

At some time prior to December, 1877, the defendants had consulted and retained as their counsel, Mr. D. Rodney Mason, of the Washington Bar. Mr. Mason was called by the defendants as a witness in the case. He was examined on their behalf as to the professional advice which he had given to the defendants with regard to the purchase of the Stark patent, and their relations to the plaintiff. After he had been examined, the plaintiff called Mr. D. P. Holloway, who, though not a member of the Bar, was Mr. Mason's partner, and acted with him for the defendants in the transaction of their patent business. Mr. Holloway produced a number of letters from the defendants to his firm and to Mr. Mason, relating to the defendants' professional business with Mr. Mason. The admission of those letters was objected to on the ground that they were confidential communications, and protected by the rule which forbids counsel to testify as to their clients' confidential communications. It is undoubtedly true that if Mr. Mason had not been called by the defendants as a witness on their behalf, and examined by them as to his confidential communications with them, the letters in question when produced by Mr. Holloway would not have been admissible in evidence, *Taylor* vs. *Foster*, 2 C. & P., 195: *Foote* vs. *Hayne*, 1 Id. 545, nor could the defendants have been compelled to produce these papers; *Minet* vs. *Morgan*, Law Reports, 8 Chancery Appeals, 361.

But the defendants, having called Mr. Mason, and having examined him as to their confidential consultations with him, cannot insist upon the exclusion of that

correspondence between Mr. Mason and themselves which tests the accuracy of his testimony.

Mr. Mason testifies (*page 540,*) that, before December, 1877, he had advised the defendants how they could manufacture the folding bed and avoid any pretense of infringing upon the plaintiff's patent.

In the latter part of December, 1877, Mr. Stevens, having completed the model of his proposed bedstead, showed it, at the defendants' request, to Mr. Mason, and that model appears to have met Mr. Mason's approval, for, on twenty-eighth February, 1878, Mr. Mason wrote to the defendants (*See page 623 of the testimony,*) advising them to discontinue the use of the Everitt patent, and expressing his approval of Mr. Stevens' invention, as avoiding any infringement upon Mr. Everitt.

In the course of his examination of the subject of folding bedsteads, Mr. Stevens saw a drawing of the Stark bedstead, in the Patent Office Reports, and showed that drawing to the defendants. He was directed by them to open communications with Mr. Stark, but, before he had accomplished that, about ninth February, 1878, Mr. Stark came into the defendant's office, having seen their advertisement of The Champion Bed in Lippincott's Magazine. Mr. Stark testified that he was of the impression that the bedstead advertised by the defendants might be an infringement upon his patent, and that he visited the defendants without having had any prior acquaintance or correspondence with them, or with any person acting for, or in any way representing them.

Mr. Mason testifies (*page 525,*) that the plaintiff's patent did not infringe upon the Stark patent, as it had been originally granted; but that the Stark patent was susceptible of being re-issued in such shape as would entirely cover the Everitt bedstead. Mr. Mason also testified:—(*page 541,*) "I made what was intended to be, and what I supposed was, a very thorough examination—an exhaustive one, of the state of the art as it existed at the time. It was necessary to do so in order to determine whether Stark could re-issue his patent so as to cover the Everitt bed."

Mr. Henry S. Hale, one of the defendants, testifies—(*page 242,*) "We" (that is, the defendants) "decided that the Stark patent was not really of itself available; that is, it could not be a saleable article, as it stood, as there were no weights in his patent, and the bedstead had to be lifted by main strength."

On the twenty-third of February, 1878, the defendants, at their Philadelphia office, bought his patent from Mr. Stark for one thousand dollars, paying him two hundred dollars in cash, and giving their due bill for eight hundred dollars, which was subsequently paid by them in instalments. Mr. Henry S. Hale testifies (*page 242,*) that the defendants bought the Stark patent with the understanding that it was to be re-issued.

The Master, therefore, finds as a fact that the defendants bought the Stark patent, not for the purpose of protecting the Everitt patent against a possible suit for infringement, but for the purpose of so using the Stark patent as to defeat the plaintiff's claim for royalty.

On twenty-third February, 1878, the day of their purchase from Mr. Stark, the defendants wrote to Mr. Mason:—"Mr. Stark says his footboard does turn the "corner like Everitt's, except that it don't form much "of a place for pillows. Have you seen his model? "Perhaps it would be well to take a look at it." (*"Exhibit 93," page 606.*)

This letter, taken in connection with Mr. Mason's testimony, shows that he had examined the Stark patent before the defendants purchased.

Mr. Stark executed in the defendants' office, at the time of their purchase on twenty-third February, 1878, an informal assignment of his patent to the defendants, which was subsequently destroyed in Washington.

Mr. Mason then, as counsel for the defendants, drew a petition for the re-issue to the defendants of the Stark patent, and a formal assignment of the patent to the Company defendant. These papers were sent to the defendants, in Philadelphia, for execution, for, on twenty-seventh February, 1878, the defendants wrote to Mr. Mason's firm, D. P. Holloway & Co.:—"En- "closed please find our check for eighty dollars, for "fees in Stark's re-issue case. We also return here- "with all the papers signed as requested, together "with the original patent and the assignment to be re- "corded. We would like to ask you one question: If "you secure the claims, as stated in the specification, "will we not then be free from Everitt without altering "the construction of our bed at all? We must get "clear from Everitt, if possible, and we prefer not to "alter the bed if it can be avoided. We think you un-

"derstand our position and will act accordingly." ("*Exhibit 77*," *page 598*.)

Mr. Stevens took this letter and its enclosures to Washington, the defendants having led him to believe that they would make use of his modification of the Everitt bedstead. He saw Mr. Mason on the morning of twenty-eighth February, and Mr. Mason then wrote his letter of that date, in which he expresses his approval of Mr. Stevens' invention. But while Mr. Stevens and Mr. Mason were consulting in Washington, the defendants wrote their letter of twenty-eighth February, 1878, ("*Exhibit 78*," *p. 599*,) in which they say:—

"Mr. Stevens left for Washington last night, and "took with him Stark's papers and check. You un- "derstand, we suppose, that if Stark's patent can be "made to cover Everitt, we do not care to make any "alterations in the bed, or adopt any of Mr. Stevens' "plans. The bed is just splendid as it is, and we hope "you can fix us all right."

Mr. Mason, at that interview, showed Mr. Stevens the contract between the plaintiff and the defendants, and Mr. Stevens claims the credit of having called attention to its eighth article, which provides:—"That "if in any suit the said letters-patent shall be "found and adjudged invalid, or to infringe on any "other patent or patents, then, and in any such case, "the said parties of the second part, or their assigns, "may, at their option, surrender to the said party of "the first part, his heirs or assigns, all right and claim "under this agreement, and thereupon be released

"from their covenants herein contained, and from any "and all obligations whatsoever, under or concerning "said agreement:"—and of suggesting, that the Stark patent be re-issued to him, Stevens, that he bring suit against the defendants for their infringement by manufacture under the Everitt patent, and that when a decree in this sham suit should have been entered against the defendants, they could surrender his then worthless patent to the plaintiff, and be released from their obligations to him. Mr. Mason was so much impressed by this ingenious scheme, that he consented to withhold from record the assignment and petition for reissue of the Stark patent to the defendants until he should receive the defendants' further instructions. Mr. Stevens returned to Philadelphia on the night of the twenty-eighth February, and on the morning of first March, 1878, he communicated his plan to the defendants, whereupon the defendants telegraphed to D. P. Holloway & Co.:—"Wait till you hear from us before recording Stark's assignment;" ("*Exhibit No. 79*," *page 600*,) but the defendants, doubtless fearing that Mr. Stevens, though sufficiently unscrupulous, was too clever to serve their purposes, determined to adopt Mr. Stevens' plan of a collusive suit for infringement, but to make Mr. Stark the plaintiff therein, and for that purpose to have his patent reissued to himself and secretly assigned to them. They appear to have laid the plan before Mr. Mason, for, on fourth March, 1878, he wrote to them (*page 622*):—

"Your case has been suspended, as directed. I "think the best course would be to return the assign-

"ment to Stark, and have him execute the application "for re-issue, as the sole owner, and then make an as- "signment with subsequent date. This need not be "recorded immediately, and, in the meantime, he hav- "ing attained his re-issue, should call on you for set- "tlement, and you call on Everitt to make his title "good, or release you from royalty, or make a fair re- "duction of same."

On sixth March, 1878, the defendant, C. Kilburn, Stevens, Stark, Holloway, and Mason, met in the office of the latter in Washington. Kilburn and Mason then informed Stevens that his model would not suit their purpose, and that the Stark patent must be re-issued in Stark's name. Stevens had, on twenty-eighth February, delivered to Mason the assignment by Stark to the defendants, and the petition by Stark for a re-issue to them. The petition was in Mason's handwriting. It was signed by Stark at the end of the specifications, and dated twenty-seventh February, 1878, and it was witnessed by Roberts and J. B. Kilburn, who had, on the last mentioned date, subscribed to it. To change it, so that it would pray for a re-issue to Stark, it was necessary to tear off its first page and substitute a new page, with this amended prayer. This was done, and the new page was then written by Mr. Holloway. A new jurat was also added, and Mr. Stark was sworn on 6th March, 1878. Stark's petition for re-issue was filed in the Patent Office, on fourteenth March, 1878. He had sold his patent on twenty-third February, to the defendants, but in his petition he describes himself as the sole

owner of the patent; and he states that he verily believes that by reason of an insufficient and defective specification, his Letters-Patent are inoperative or invalid, that said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, and that he verily believes himself to be the first and original inventor of the improvements set forth and claimed in his amended specification. The specifications are apparently skilfully drawn, so as to cover the Everitt patent, and constitute it an infringement upon the Stark patent re-issued. Whether or not they succeed in accomplishing this result is immaterial in this case.

Stark's application for a re-issue was granted, and is numbered 8,161, and dated ninth April, 1878.

On sixth March, the old assignment from Stark to the defendants was burned, and a new assignment from him to the defendants was drawn and executed by Stark, and received by Mr. Mason on behalf of the defendants, from Stark, on seventh March, 1878. Mr. Mason appears to have held this assignment in his custody until twenty-seventh December, 1878, when he delivered it to the defendants, and it was recorded sixth January, 1879, in the Patent Office at Washington, in Liber T., 23, page 70. Mr. Mason, when on the witness stand, endeavoring to justify his action in regard to the filing of the Stark petition for re-issue, by stating that he had held the Stark assignment in *escrow*, and that it never was technically delivered to the defendants, nor did title vest in them until twenty-seventh December, 1878, but as the de-

fendants had bought and paid for the Stark patent on twenty-third February, 1878, and as Mr. Mason was paid by them and was acting for them in the Stark application for re-issue, it is clear that the delivery of the Stark assignment to him, on seventh March, 1878, was a delivery to his clients, the defendants, and that their equitable title to the patent vested on the day of its purchase, namely twenty-third February, 1878, and their legal title on seventh March, 1878.

On the fourth of March, 1878, the defendants wrote to Mr. Mason:—

"Our royalty to Everitt becomes due on the tenth "instant. What do you think about notifying us that "we infringe on Stark, so we can have an excuse for "postponing the payment of said royalty. You may "think best about notifying Everitt also. We judge "the patent will be issued next Tuesday, ninth instant, "can you fix it so we will get word, say not later than "the tenth? We have always paid his royalty very "prompt, and of course we are anxious to have it cease "soon as possible." ("*Exhibit 81*," *page 601*.)

On eleventh March, 1878, the defendants wrote to Mr. Mason:—

"Would like to see you and show you a model "wherein we have covered up the space which "Everitt claims, for pillows, etc., at a cost less than "twenty-five cents. If you desire we will send "the model by express to you." ("*Exhibit 82*," *page 602*.)

On fifteenth March, 1878, the defendants wrote to

Mr. Mason, sending him the model referred to in their prior letter. (" *Exhibit 80,*" *page 601.*)

On first April, 1878, the defendants wrote D. P. Holloway & Co., requesting them to send notices of infringement in Stark's name, to A. G. Frye, of Boston, and De Graff & Taylor, of New York, alleged infringers of the Stark patent. (" *Exhibit 90,*" *page 605.*)

On the eighth of April, 1878, the defendants wrote Mr. Mason, requesting that the Stark re-issued patent be mailed to them. (" *Exhibit No. 83,*" *page 602.*)

On the tenth of April, 1878, Mr. Mason wrote to the defendants the following remarkable letter:—(" *Exhibit 40,*" *page 97.*)

" WASHINGTON, D. C., *April 10, 1878.*

" HALE & KILBURN MANUFACTURING COMPANY.

" *Gentlemen:*—

" As the attorney of Andrew Stark, I call your atten-
" tion to the re-issue of his patent of August 22, 1865,
" which you are infringing in the manufacture of your
" 'Everitt Bedstead.' I do so thus promptly because I
" believe that you will recognize the rights of my client,
" and will not continue the infringement of his patent.

" Should you desire to continue the manufacture, I
" will be prepared to negotiate for terms of license.

" Yours, very truly,

" R. MASON,"

This letter was received by the defendants on eleventh April, and was shown to the plaintiff, and was used by them as a reason for refusing to pay the

plaintiff his monthly instalment of royalty then due. The plaintiff declined to recognize Stark's claim, and the defendants made him a small payment on account of his royalty. On the same day, the defendants replied to Mr. Mason's demand by a letter which, like Mr. Mason's, was written to be shown to the plaintiff, ("*Exhibit 84*," *p. 602*,) in which they say:—

"Yours of tenth instant is at hand, and in reply "would respectfully ask you for a copy of Stark's "patent, (the re-issue) that we may examine the "same in reference to the infringement claimed by "your client against us."

But, on the same day, the defendant, H. S. Hale, wrote a private letter to Mr. Mason, which was not meant for the plaintiff's eye, saying:—

"We presented your letter to Mr. Everitt to-day, and "per his request we write you for a copy of the re-issue; "you might answer stating when it will be out and that "you will forward a copy next week; we will show your "answer to him and that will keep him quiet until the "re-issue comes to hand." ("*Exhibit No. 85*," *p. 603*.)

On the twelfth of April, 1878, Mr. Mason wrote to the defendants acknowledging the receipt of their letter of eleventh instant, and saying:—

"I will furnish you a copy of the re-issue. I find that "my notice was so far premature that I shall not be "able to furnish a copy until next week, as the patent "is not on this week's delivery." ("*Exhibit 95*," *page 707*.)

Shortly after this the defendants appear to have re-

ceived from Mr. Mason the re-issue, for an undated letter of theirs was produced, in which they say:—

"We received the copy of re-issue this A. M., and no-
"tice that the signatures of two of our clerks are on it
"as witnesses; does this not look bad to show to Eve-
"ritt, as he knows both of them? Is there any way to
"change it, we do not suppose there is, but the mys-
"tery to us is if Everitt notices their names, which he
"will, what can we say to him as a reason why those
"names appear on the re-issue? Please let us hear
"from you before we show it to Everitt." ("*Exhibit No. 86*," *page 603*.)

How Mr. Mason may have comforted the defendants with respect to the apprehended discovery of their fraud upon the plaintiff, is not known, for no further letter from Mr. Mason to the defendants was put in evidence.

On eighth May, 1878, (*Page 14*,) Stark receipted to the defendants for one thousand dollars, in full consideration of his assignment of patent, as per contract dated April 1878.

On the twenty-second of May, 1878, a meeting was held at the office of E. Coppee Mitchell, Esq., who had before that been retained as counsel for the plaintiff. There were present, the plaintiff, with Messrs. Connolly and Mitchell as his counsel, the defendants, C. Kilburn and H. S. Hale, with Mr. Otterson as their avowed and ostensible counsel, and Mr. Mason, really counsel for the defendants, but professing to represent the adverse interest of Stark, the pretended owner of the re-issued patent. At that meeting, Mr. C. Kilburn

denied that the defendants then owned the Stark patent, and Mr. Mason offered, on Stark's behalf, to grant a license under the Stark patent, in consideration of a five per cent. royalty, which, of course, would have to be deducted from the plaintiff's seven per cent. royalty.

Mr. Otterson knew nothing of the relations between his clients, the defendants, and Mr. Mason and Mr. Stark, and the defendants purposely kept him in the dark with regard to this.

On eighth July, 1878, Mr. Mason, as counsel for Stark, filed in the Circuit Court of the United States for the Eastern District of Pennsylvania, a bill in equity, entitled as of April Sessions, 1878, No. 82, in which Stark was the plaintiff, and the Hale & Kilburn Manufacturing Company was the defendant. The bill, which is signed by Mr. Mason, as solicitor for the plaintiff, and which has no signature or oath of the plaintiff attached to it, is apparently throughout in the handwriting of Mr. Mason. The bill avers Stark's original patent and the re-issue to him, that the defendants are infringing upon Stark's patent by their public manufacture and sale of folding bedsteads, that the plaintiff has been damaged to the amount of five thousand dollars, and prays an injunction, special until hearing and perpetual thereafter, to restrain the defendants from the further manufacture of bedsteads, and infringements upon the plaintiff's re-issued patent, and also to account to the plaintiff therein.

There is nothing to show that Stark, the plaintiff therein, ever saw that bill, or heard of that suit.

On eighth July, 1878, the defendants wrote Mr. Mason:—

"Our attorney, Judge Otterson, says he won't send "to Circuit Court of United States after the bill, that "he understood you were to furnish a copy. Of "course he don't know the whole story, and hence his "refusal. Now hadn't you better write to the clerk to "either serve it upon us in the usual way, or have him "send it to James Otterson, No. 705 Sansom street. "You see he thinks it is not our business to run after "our own bills. We think best not to let him into the "secret as yet, he understands it in this wise: that we "are willing to pay seven per cent. royalty, no matter "to whom we pay it to." ("*Exhibit No. 89*," *page 604*.)

On tenth July, 1878, Mr. Otterson, as counsel for the defendants, believing the suit to have been brought in good faith, and to be adverse to the defendants, and to the interests of the plaintiff in this case, wrote to Mr. Mitchell, the plaintiff's counsel, inclosing him a copy of the Stark bill for his examination, and for the examination of Mr. Everitt, and stating that he, Mr. Otterson, wanted whatever information and assistance Mr. Everitt might have at command to resist the attack.

On tenth July, 1878, the plaintiff made a formal demand upon the defendants for the accounts and the balance of royalty due to him. The defendants refused, giving as their reason that Stark had brought suit for an infringement against them. The defendants being, under the terms of their contract, more than sixty days in default, the plaintiff filed his bill in this case on twenty-fourth September, 1878.

On twenty-second November, 1878, Mr. Otterson deposited in the office of the Court of Common Pleas, a sealed envelope, addressed to Messrs. Bowman and Mitchell, the plaintiff's counsel, containing the plaintiff's contract with the defendants; a re-assignment of the patent by the Hale & Kilburn Manufacturing Company to the plaintiff, dated sixteenth November, 1878, and a reference to the record in the Patent Office, of the assignment of the plaintiff's patent, by Hale, Kilburn & Co., to the Hale & Kilburn Manufacturing Company. That envelope was produced before the Master, on third November, 1879, opened by Mr. Otterson, and the papers therein contained put in evidence.

On twenty-seventh December, 1878, the Stark suit in the Circuit Court was discontinued by Mr. Mason's written order.

The fifth article of the contract between the parties stipulated that "if the said parties of the second part, "or their said assignees, shall at any time fail to ac- "count for and pay over, when due, sums accruing to "the said party of the first part, his heirs or assigns, "under the terms of the agreement, and shall continue "in said default for sixty days after demand for pay- "ment, or if they shall fail to keep the stipulation made "in clause three hereof, then, and in any such case, the "party or parties so in default shall forfeit all his or "their interest in said Letters-Patent, and shall re-as-

"sign the same, by proper instrument in writing, to "the said party of the first part, his heirs or as- "signs."

The bill avers in its sixth paragraph that the "said "defendants have continued in default for more than "sixty days, in not accounting for and paying over to "your orator the royalty due him under said agree- "ment, after your orator demanded of the defendants "payment of the same, whereby the rights of the said "defendants to your said orator's patent, and the said "improvements thereon, were forfeited, and the said "defendants have not re-assigned the said patent and "improvements to your orator, according to the terms "of the said agreement," and prays for a re-assign- ment of the Letters-Patent.

The fourth paragraph of the answer admits "that "the defendants have continued in default in this res- "pect for more than sixty days in not paying over un- "der the said agreement, but are in no default for not "accounting, and they agree that they have forfeited "their rights to the plaintiff's said patent, and although "they have not hitherto re-assigned the same, they "have caused an offer so to do to be made to the "plaintiff, in person and through counsel, but it has "not been accepted, and the defendants, the said Hale "& Kilburn Manufacturing Company, under advice of "counsel and in compliance with the prayer of the said "bill of complaint, deposit herewith in the hands of the "Prothonotary of this Court, at the time of filing this "answer, a re-assignment of the patent referred to, so "that the said plaintiff shall thereunder have and take

"all his former rights and privileges, and the said re-
"assignment is subject to his order."

The Master finds that the defendants are in default, within the terms of the fifth article of the contract, and that they continued in default for more than sixty days before the bill was filed, and he, therefore, reports that the defendants be directed to re-assign to the plaintiff his Letters-Patent.

The seventh article of the contract stipulates:—
"That any improvements in said patented bedsteads
"which may be made by either of the parties hereto,
"and any Letters-Patent of the United States ob-
"tained for such improvements, shall be held and
"enjoyed by said parties of the second part, *under and*
"*subject to the terms of this agreement.*" The words italicised obviously mean that the defendants are to hold any patents for improvements with the same rights and subject to the same liabilities, upon and under which the plaintiff's patent is held by them, and, therefore, subject to the liability of assignment to the plaintiff in case of their default under the contract.

The bill avers:—

"That several improvements to said patented pro-
"cess have been, from time to time, made by the said
"defendants, or some of them, which are now held by
"the said Hale & Kilburn Manufacturing Company,

"under the terms of the said agreement, which your "orator for want of knowledge is unable to more par- "ticularly specify," and prays for an assignment of those improvements.

The answer denies "that the said improvements are "on any of the features covered by the said patent of "the plaintiff," and submits to the judgment of the Court the question of their liability to assign them to the plaintiff.

The Master finds that—

The defendants have obtained and now hold the following patents for improvements in wardrobe bedsteads:—

("*Ex. A.*")—No. 159,908, granted sixteenth February, 1875, to H. W. Curtis.

("*Ex. B.*")—No. 181,450, granted twenty-second August, 1876, to C. Kilburn.

("*Ex. C.*")—No. 182,465, granted nineteenth September, 1876, to S. D. Newcomb.

All of these patents specifically refer to the plaintiff's patent, and were granted for improvements on his patent, and they have been severally assigned to the defendants.

The defendants have also obtained and hold two other patents, viz.:—

("*Ex. 71.*")—Letters-Patent No. 160,185, granted twenty-third February, 1875, to Henry S. Hale, for an "improvement in bed bottoms." The specifications of this patent show that it was intended for and usable with any bedstead, folding or otherwise.

("*Ex. 42.*")—Letters-Patent No. 210,777, granted tenth December, 1878, to Henry S. Hale, for an "improvement in wardrobe bedsteads." Neither this patent nor its specifications refer by name to the plaintiff's patent, but the specifications claim that the "invention consists of certain improvements in that class "of bedsteads which can be converted into a represen-"tation of a wardrobe, cabinet, book-case, etc."

The Master, therefore, finds and reports, that, under the seventh article of the contract, the plaintiff has no claim upon Letters-Patent No. 160,185, but that the plaintiff is entitled to demand and receive an assignment of the other Letters-Patent above mentioned, and that the defendants, being in default under the terms of the contract, be directed to assign to the plaintiff Letters-Patent Nos. 159,908, 181,450, 182,465, and 210,777.

The defendants, by their contract with the plaintiff, bound themselves to manufacture under his patent, by all reasonable efforts to promote the sale and introduction of his patented bedsteads, to pay him a royalty upon such of his patented bedsteads as they made and sold, and to hold under the terms of that contract any patents which they might obtain for improvements upon the plaintiff's patent.

That contract was an agreement to share gross returns, and it did not create such a community of interest in profit or loss as to make the contracting par-

ties partners *quoad* third parties:—*Benjamin* vs. *Porteus*, 2 H. Bl., 590; *Dry* vs. *Boswell*, 4 M. & S. 340; *Pott* vs. *Eyton*, 3 C. B., 32; *Heyhoe* vs. *Burge*, 9 id., 431; nor, *a fortiori*, partners *inter se*; *Gibson* vs. *Lupton*, 9 Bingham, 297; *French* vs. *Styring*, 2 C. B., New Series, 357; *Brown* vs. *Jaquette*, 8 Weekly Notes, 475.

Yet, from the moment of the execution of that contract, the parties occupied to each other a relation of confidence, and thenceforth it could not be permitted that either party should acquire any rights prejudicial to the other party's interest in the subject matter of the contract.

The bill, as amended, states that the defendants purchased the Stark patent, avers "that the said de-"fendants claim that the patent of your orator is an "infringement upon the said Stark patent, and that as "owners of the said Stark patent, they can manufac-"ture folding beds substantially in the same manner "as they have been doing under their said agreement "with your orator, and without paying your orator "anything therefor," charges "that the relations which "existed between the said defendants and himself "were such that they could not, during the existence "thereof, acquire title to said Stark's patent adversely "to your orator, but they must be presumed to have "acted for the joint interest of all interested in the "manufacture of the said folding beds under said agree-"ment," and prays an assignment to the plaintiff of Stark's patent and all rights thereunder.

No answer was put in to the amended bill, but the answer to the bill, as originally filed, was sworn to on

sixteenth November, 1878, several months after the Stark patent had been bought and paid for by, and assigned to, the defendants. It avers that the defendants have "contracted for the control of the said Stark patent," but denies "that the same has been assigned to them," and avers that the defendants secured the control of that patent in good faith, on the advice of counsel, upon full communication of the facts to the plaintiff, and after he had refused to co-operate with the defendants.

The defendants, C. Kilburn, and H. S. and J. W. Hale, testified that the plaintiff was informed of Stark's presence in Philadelphia, and of the negotiation for the purchase of this patent, and that the plaintiff was invited to participate in that purchase, but refused. The plaintiff denies that he was informed of Stark's presence in this city, or of the negotiations, or that he was asked to participate in the purchase, until after tenth May, 1878, and that then thirty thousand dollars was named as Stark's price for the patent. Mr. Stevens testified that the defendant, C. Kilburn, told him not to let the plaintiff know of Stark's presence in this city.

The falsity of the defendants' answer as to the assignment of the Stark patent, the conflict between their testimony and that of the plaintiff and Mr. Stevens, the contradiction of their testimony on other points, by their own letters, and their conspiracy with Mr. Mason and Mr. Stevens, forbid the Master to credit their testimony as to their purchase of the Stark patent in good faith, and after notice to the plaintiff. If the Master were otherwise in doubt, as he is not, the

admissions of the defendant, H. S. Hale, and of Mr. Mason, with regard to the want of practical value in the Stark patent in its original form, and the purpose of the defendants to buy it to re-issue it, so as to cover the Everitt patent, would convince him that the defendants could not have offered the plaintiff the opportunity of participating in that purchase.

The Master, therefore, finds that the defendants' negotiations with Stark were concealed from the plaintiff, that he was not offered an opportunity to participate in the purchase of the Stark patent, and that the defendants secretly purchased that patent in their own right for the purpose of using it as a means to compel the plaintiff either to abandon his patent, or to so modify his contract with them as to let them manufacture under his patent for a diminished royalty. That this action of the defendants was an actual fraud upon the plaintiff is too clear for argument. The rule of equity upon this subject is perhaps best stated in the American Notes to *Keech* vs. *Sanford*, 1 Leading Cases in Equity, page 92, in these words:—"Wherever one "person is placed in such relation to another, by the "act or consent of that other, or the act of a third per- "son, or of the law, that he becomes interested for "him, or interested with him, in any subject of property "or business, he is prohibited from acquiring rights in "that subject antagonistic to the person with whose "interests he has become associated * * * * and "equity vindicates this in the form of a trust."

This rule of equity and of a pure morality is applied by the Courts in many different relations.

Thus, a trustee is not permitted to hold for his own benefit the renewal of a lease belonging to the trust estate, but he is compelled to assign it to the trust, and to account for its profits:—*Keech* vs. *Sanford*, Chancery Cases, 61; *Galbraith* vs. *Elder*, 8 Watts, 81; and a trustee is not permitted to buy an incumbrance upon and hold it against the trust estate, *Green* vs. *Winter*, 1 Johnson's Chancery, 27.

The same rule has been applied as between husband and wife:—*Swisshelm's Appeal*, 6 P. F. S., 486; as between mother and children:—*Weaver* vs. *Wible*, 1 Casey, 270; as between devisees under the same will:—*Van Horne* vs. *Fonda*, 5 Johnson's Chancery Reports, 388; as between tenants in common claiming under the same deed:—*Lloyd* vs. *Lynch*, 4 Casey, 424; as between principals and agents:—*Parkes* vs. *Alexander*, 1 Johnson's Chancery Reports, 394; *Rankin* vs. *Porter*, 7 Watts, 387; *Mowson* vs. *Thompson*, Law Reports, 9 Q. B., 480; as between attorney and client:—*Galbraith* vs. *Elder*, 8 Watts, 81; *Henry* vs. *Raiman*, 1 Casey, 354; as between joint purchasers of land in moieties:—*Carter* vs. *Horne*, 1 Equity Abridgment, 7; as between partners:—*Featherstonhaugh* vs. *Fenwick*, 17 Vesey, 298; *Clegg* vs. *Fishwick*, 1 M. & G., 294; *Bast's Appeal*, 20 P. F. S., 301; as between joint owners of a ship:—*Gardner* vs. *McCutcheon*, 4 Beavan, 534; and, as between intending partners:—*Fawcett* vs. *Whitehouse*, 1 R. & M., 132; *Simons* vs. *The Oil Co.*, 11 P. F. S., 202; *Short* vs. *Stevenson*, 13 Id., 95; *Rice's Appeal*, 29 Id., 204.

As Lord Cranworth pointed out, in *Smith* vs. *Kay*, 7 H. L., 771, equity in dealing with cases of fraud does not undertake to specify all the instances of the application of its equitable rules; and with regard to this very class of frauds, Mr. Bispham, in his learned treatise upon Equity, page 105, says, after citing many cases:—"These instances must be considered only as "illustrations of the principle, and not as an exhaus- "tive catalogue of the parties to whom it will be con- "fined."

In *Duff* vs. *Wilson*, 22 P. F. Smith, 442, where a cotenant had, under circumstances of actual fraud, purchased an outstanding incumbrance upon the common property, the present Chief Justice of Pennsylvania thus laid down the law:—

"Where several persons have a joint or common in- "terest in an estate, one cannot purchase an incum- "brance or an outstanding title and set it up against "the rest, for the purpose of depriving them of their "interest. * * * Equity will, therefore, consider "the purchase as *bona fide*, and intended for the bene- "fit of all those with whom he is associated in interest. "He is a trustee for them, and is entitled to be reim- "bursed all the purchase has cost him, before he can "be required to convey to them. * * * But this "is on the hypothesis that he acted *bona fide*. It is "only when the party has acted honestly, or, what is "the same thing, in the absence of evidence of dis- "honesty must be presumed to have so acted, that he "has any claim to reimbursement. In case of positive "fraud, the rule is otherwise."

The circumstances of this case bring it clearly within the rule. The relation of confidence between the parties created by the contract for manufacture and sale by the defendants, under the plaintiff's patent, the defendants' covenants to promote the sale and introduction of the bedsteads made under the plaintiff's patent, and to advertise the bedsteads under the plaintiff's name, and the defendants' fraud, beginning in their suppression of the plaintiff's name in their advertisements, continuing in their false accounts, and fitly concluded by their secret purchase of a prior patent, their re-issue of that patent in such shape as to cover the plaintiff's patent, and their sham suit for infringement against themselves, all combine to make a case which merits the severest condemnation which a Court of Equity can impose.

The Master reports that the defendants be directed to assign to the plaintiff the Stark patent and all their rights thereunder.

The defendants cannot be permitted to deduct the one thousand dollars paid by them to Stark from the balance which is due by them to the plaintiff under the account. Having failed in their speculation in the purchase of the Stark patent at the plaintiff's expense, they must be content to bear the loss.

The Master submits herewith a form of decree, drawn in accordance with the facts and findings herein reported.

CHRISTOPHER STUART PATTERSON,
Master.

Form of Decree.

And now this cause came to be heard at this term, on bill, answers, proofs, and Master's Report, and upon consideration thereof it is ordered, adjudged and decreed as follows:—

First.—Upon the account as stated, of the defendants' sales under the plaintiff's patent and the contract of sixteenth April, 1874, the defendants are indebted to the plaintiff in the sum of $6,788 07, with interest from tenth December, 1878, the date of the entry of the interlocutory decree in this cause, and the defendants are hereby directed to forthwith pay to the plaintiff the said sum of $6,788 07, with interest as aforesaid.

Second.—The defendants are hereby directed forthwith to assign and deliver to the plaintiff the Letters-Patent for an improvement in folding bedsteads, numbered 148,940, and dated twenty-fourth March, 1874.

Third.—The defendants are hereby directed forthwith to assign and deliver to the plaintiff the following Letters-Patent, to wit:—Number 159,908, granted sixteenth February, 1875, to H. W. Curtis; Number 181,450, granted twenty-second August, 1876, to C. Kilburn; Number 182,465, granted nineteenth September, 1876, to S. D. Newcomb, and Number 210,777, granted tenth December, 1878, to Henry S. Hale.

Fourth.—The defendants are directed hereby forthwith to assign and deliver to the plaintiff the re-issued patent numbered 8,161, and granted ninth April, 1878, to Andrew Stark.

Fifth.—The costs of this cause are to be paid by the defendants.

IV. EXCEPTIONS TO MASTER'S REPORT FILED IN COMMON PLEAS.

I.—Mode of Accounting.

1. The learned Master erred in finding (page 6) that there has been no such statement or settlement of accounts between the plaintiff and defendants as would be conclusive against the former and a bar to further accounting.

2. In charging (page 9) the defendants with royalty upon the aggregate of sales at the rate of ten per cent. discount from the retail price instead of charging at the rate of thirty-three per cent. discount, which was the net wholesale approximate rate or price upon which the plaintiff's royalty was to be calculated.

3. In charging (page 9) the defendants with royalty upon prices received, where the sales stated by the Master to have been upon a wholesale basis were in fact not upon such basis, the wholesale basis being shown by the testimony to be at the rate of an average of thirty-three per cent. discount.

4. In stating (page 9) that O. D. Roberts *admitted* that all sales to furniture dealers were wholesale sales, whether one or more articles were sold at a time, when Mr. Roberts testified (page) that he used the word "wholesale" only to distinguish between sales to dealers and those to private parties, and without reference to the number of articles sold.

5. In charging defendants for all articles sold to dealers as wholesale sales, although but a single article was sold, in face of the testimony of Mr. Hoffman, plaintiff's own witness, that the *only wholesale sales* made were to the branch store and the agencies. (See testimony.)

6. In stating (page 8) that the defendants based their claim to deduct thirty-three and one-third per cent. "upon their practice in billing goods to their branch stores at that discount," when the evidence shows and the Master finds (pages 12, 13) that they had but one branch store, viz.: in New York, and agencies in other places.

7. In finding (page 9) that Exhibits 9 and 29 put the matter of the rate of discount beyond question, as these exhibits applied only to the time of their issue, and to the sales in this city.

8. In stating (page 24) that "the plaintiff was not permitted *at any time* to have access to the defendants' books of original entry" when he himself testified that upon *only one occasion* did he ask to see the other books, and there was abundant testimony that afterwards the books were offered to him for his inspection.

9. In stating (page 24) the defendants' method of keeping their accounts relating to this branch of their business in a separate book (No. 10), in such a way as to imply that it was with a dishonest purpose, and omitting to state that the plan was proposed and submitted to the plaintiff, and assented to by him, and that even *he* did not testify that he ever objected to it.

10. In stating that the defendants' copies into this book (No. 10), "from time to time, were such entries from their books of original entry as in their opinion the plaintiff was entitled to see," as there is no testimony in the case to warrant such a statement.

11. In the manner of stating (page 12) that "defendants' several accounts (Exhibits 1, 2, 3, 4, Exhibit 10, and the exhibit annexed to the answer) differ from each other, and from the plaintiff's claim," whereas (see pages 6 and 7) the

first four exhibits mentioned *profess* to be different forms of stating their account, as does the exhibit annexed to their answer.

12. In stating the account (page 14) upon the theory that the items of Exhibits 1, 2, 3, 4, and 10, constitute admissions by and against the interest of the defendants, instead of taking all the items from the books of the defendants.

13. In stating (page 15) that the defendants have "systematically confused the record of their sales under the contract so as to unlawfully increase their profits, and diminish the plaintiff's royalty, and have * * * persistently understated the actual prices realized from their sales, and have omitted some sales," and in implying that books kept for plaintiff's inspection were dishonestly kept.

14. In annexing (page 55) an account marked "Exhibit A," and stating that the balance therein found against the defendants is a true and correct one, and also in stating that the annexed account marked "Exhibit B" is a true and accurate statement of the several monthly totals of royalty due to the plaintiff.

15. In not reporting that the balance due by the defendants to the plaintiff on account of royalty amounted to only about three hundred and thirty-one dollars.

16. In reporting in annexed account, "Exhibit A," that defendants are bound to pay royalties on all the items marked as incorrect in the corrected copy of said exhibit annexed to these exceptions, whereas the books and testimony show that defendants are not bound so to do.

17. In not having stricken out in said annexed account, "Exhibit A," all items marked incorrect in the copy thereof annexed to these exceptions, and all charges against defend-

ants where sales did not actually take place, or were afterwards rescinded, as shown in the said copy annexed hereto.

18. In finding (page 24) that the defendants made a uniform and unauthorized deduction, by way of discount, from the wholesale prices actually received by them, and implying that defendants thereby acted in bad faith, whereas such deduction is the very question in dispute.

II.—Charges for Springs, Ornaments, and other matters.

19. In allowing the plaintiff royalty upon the prices of springs sold with the bedsteads, and finding that such springs as a matter of fact, were an essential part of the bedstead, whereas the testimony shows that such allowance should not have been made.

20. In holding (page 10) that the defendants are bound to account for prices received by them for beds specially ornamented with mirrors, ebony strips, etc., whereas no such arrangement was contemplated by the parties in their agreement.

21. In disallowing (page 11) the claim of the defendants to charge the plaintiff with $162.50 for fees paid in August, 1874, to Messrs. Collier, Harding, and H. M. Beadle & Co., for opinions upon the Everitt patent, whereas the plaintiff was bound by article 4 of his contract to defray one-half of the expenses of any suits at law or in equity, etc.

22. In refusing to charge (page 11) plaintiff with the disbursements in regard to the Centennial Exhibition, amounting to fifty-eight dollars and fifty cents.

23. In finding (page 25) that the defendants persistently violated the article of their agreement in the matter of

advertising bedsteads made under the plaintiff's patent on the various occasions therein stated by the Master, and in holding (page 26) that this matter was relevant and material to this controversy.

III.—Invalidity of Everitt's Patent, and Right of Defendants to buy in Stark's Patent.

24. In holding (page 20) that the form of the interlocutory decree under which the reference to him as Master was made, precluded the defendants from setting up the invalidity of the contract between them and the plaintiff, resulting from fraudulent concealment and misrepresentation on his part and from failure of consideration.

25. In holding (page 20) that the granting of the Everitt patent was *prima facie* evidence of the novelty and usefulness of the invention, and refusing to permit the defendants to show that the said patent was invalid and worthless as the subject of contract, by reason of being an infringement upon a prior existing patent.

26. In holding (page 20) that the prior rejection of the plaintiff's patent, by reason of its being an infringement of the Stark patent, cannot affect its validity as subsequently granted, in this proceeding.

27. In not finding as a fact that the existence of the Stark patent was not discovered by the defendants until February, 1877, three years after the date of the contract between these parties, and after that contract had been recorded.

28. In stating (page 26) that "as the sales of the bedsteads increased, and the amount of the plaintiff's royalty grew in like proportion, the defendants *seem* to have formed a purpose to compel his reduction and ultimate relinquishment of even the *unfairly* diminished royalty which they then allowed him."

29. In holding (page 27) that the witness, Mr. D. P. Holloway, was compelled to produce in the face of defendants' objection, at the call of the plaintiff, the letters between defendants and D. R. Mason, Esq, these letters being privileged communications between attorney and client.

30. In finding as a fact (page 29) that the defendants bought the Stark patent, not for the purpose of protecting the Everitt patent against a possible suit for infringement, but for the purpose of so using the Stark patent as to defeat the plaintiff's claim for royalty, whereas the testimony shows the contrary.

31. In holding (page 34) that whether or not the specifications for the reissue of Stark patent do or do not cover the Everitt patent, is immaterial to this case.

32. In not referring to the fact that the defendants had purchased the Maine patent as well as the Stark, for the purpose of protecting themselves and their business.

33. In not finding that the sum of $30,000 mentioned, referred only to the *Maine* patent and not to the Stark patent at all, and was then only mentioned in a speculative way as a price the owners would probably ask for the patent.

34. In finding (page 47) that the plaintiff was not informed of Stark's presence in Philadelphia, nor of the origin of the negotiations between Stark and the defendants with reference to a purchase of the Stark patent.

35. In stating (page 47) that the defendants' answer, referring to the purchase of the Stark patent, is false.

36. In reporting (page 49) that the defendants could not equitably purchase the Stark patent.

37. In holding (page 48) that the plaintiff and defendants occupied such a relation towards each other as to preclude the latter from obtaining any advantage from a patent such as the Stark patent (which was not merely an improvement on the Everitt patent, nor subsidiary to the same, but prior and adverse thereto), and holding it adversely to the Everitt patent, whereas the evidence shows that the Everitt patent, being an infringement of the Stark patent, the defendants were entitled to buy in the Stark patent for their own protection.

IV.—Assignment of Patents.

38. In not reporting that a reassignment of his patent was tendered to the plaintiff by the defendants on November 22d, 1878.

39. In reporting (page 45) that under the terms of their contract, the defendants should assign to the plaintiff Letters Patent No. 159,908, granted February 16th, 1875, to H. W. Curtis; No. 181,450, granted August 22d, 1876, to C. Kilburn; No. 210,777, granted December 10th, 1878, to Henry S. Hale.

40. In reporting (page 45) that defendants should assign to plaintiff Letters Patent No. 182,465, granted September, 1876, to S. D. Newcomb.

41. In reporting (page 51) that defendants should assign to the plaintiff the Stark patent, and all their rights thereunder, and holding (page 34) that whether or not the specifications upon which this patent was reissued, do or do not cover the Everitt patent, is immaterial to this case

42. In sustaining the second prayer of the plaintiff's bill.

43. In reporting (page 55) that the defendants should pay the costs of this suit.

GEORGE BIDDLE,
JAMES OTTERSON,
GEORGE W. BIDDLE,
For Defendants.

V. SUPPLEMENTAL REPORT OF MASTER UPON THE EXCEPTIONS FILED BY THE DEFENDANTS.

The Supplemental Report is as follows:

A printed copy of the Report, not including the Account ("Exhibit A"), was sent to the counsel on twenty-fourth December, 1880. On fifth February, 1881, the Master notified the counsel that his report would be filed on twenty-first February, and that, in the meantime, it, with its Exhibits, including the Account, could be examined at his office. An Order of Court having been made giving the defendants further time in which to file exceptions to the Report, they on fifth March, 1881, filed with the Master the forty-three printed exceptions, and the very large number of specifications of errors in the account, all of which exceptions and specifications of error are filed herewith.

The learned counsel for the defendants having asked to be heard in support of their exceptions, the Master held meetings on the 9th, 10th and 11th of March, 1881, at which he was attended by W. P. Bowman, Esq., and E. C. Mitchell, Esq., for the plaintiff; and by Edward A. Ackley, Esq., J. Rodman Paul, Esq., George Biddle, Esq., James

Otterson, Esq., and George W. Biddle, Esq., for the defendants, and also by the plaintiff; the defendant, H. S. Hale; and Mr. Roberts, the defendants' book-keeper.

The Master has had the benefit of an able argument by George W. Biddle, Esq., in support of the exceptions to the conclusions of law stated in the Report, and in particular in regard to the 24th, 25th and 41st exceptions.

The twenty-fifth exception is directed to the Master's alleged error in holding "that the granting of the Everitt "patent was *prima facie* evidence of the novelty and useful- "ness of the invention, and refusing to permit the defend- "ants to show that the said patent was invalid and worthless "as the subject of contract by reason of being an infringe- "ment upon a prior existing patent."

The Master reports that this exception is not well founded in fact. The Master did not refuse to permit the defendants to show that the plaintiff's patent was invalid and worthless by reason of being an infringement on a prior existing patent. The record does not show that the defendants made, nor that the Master rejected, any such offer of proof. There is no evidence, in the cause, which would justify the Master in finding that the plaintiff's patent infringed upon the Stark patent as originally granted. The Patent Office examiner decided that it did not. Mr. Mason, the defendants' counsel, advised them that it did not, and the defendants having secretly bought the Stark patent, proved their concurrence in that view by having that patent fraudulently reissued in such shape as apparently to cover the plaintiff's patent.

The Master has found:—

I.—That the interlocutory decree having directed the defendants to account under the contract, it is not, at this stage of the cause, open to them to set up the alleged invalidity of the contract, or its want of consideration.

II. That a State Court has not jurisdiction to determine as to the validity of a patent, nor to decide a question of infringement.

III. That the prior rejection of the plaintiff's patent cannot affect its validity as subsequently granted.

IV. That the plaintiff's patent did not infringe on the Stark patent as originally granted.

V. That the defendants cannot now be heard in the face of their declarations, as quoted upon pages 21 and 22 of the report, to object that the plaintiff's patent is lacking in utility and novelty.

VI. That the Stark patent was reissued as part of a fraudulent scheme, in order to cover the Everitt patent, and to constitute it an infringement of the Stark patent reissued, and that whether or not that purpose be accomplished, is immaterial in this case.

Mr. Biddle contended that the Master was in error in holding that the interlocutory decree in this cause prevented the defendants from raising the question of the invalidity of the Everitt patent, and also in error in holding that a State Court has not jurisdiction to determine as to the validity of a patent, nor to decide the question of infringement.

As to the first point, the Master is of opinion that however competent it may be for the Court to hold itself free, notwithstanding the interlocutory decree, to consider the alleged failure of the consideration of the contract between the parties, it is not competent for the Master, as its officer, appointed by that interlocutory decree, to regard as open a question which that decree concludes.

As to the second point, the precise question is whether a State Court has jurisdiction to determine whether a patent infringes upon a subsequently reissued patent, the objection

of infringement being set up by way of defense to a suit under a contract. The issue is not upon the validity of the patent, but is exclusively upon the question of infringement. It has been held that the issue of infringement, even when set up by way of defense, is not within the jurisdiction of a State Court.

Parkhurst vs. *Kinsman*, 2 Halst., Ch., 600.

That case and the doctrine asserted by it are cited and recognized by SHARSWOOD, C. J., in *Slemmer's Appeal*, 8th P. F. Smith, 163.

The Master therefore feels compelled to adhere, on these two points, to the views stated in his Report. The question being one of law, if error there be, the Court, to whom this report is submitted, will correct it. But if the defense of infringement be not barred, either by the interlocutory decree, or the want of jurisdiction in the Court, it still remains to be said that a Court of Equity will not permit the defendants to take advantage of their own wrong by setting up as a defense to their liability under their contract with the plaintiff a technical invalidity in the plaintiff's patent which was the result solely of the defendants' fraud, and which was created by them long after the date of the contract and for the very purpose of enabling them to avoid the fulfilment of their obligations under the contract. Indeed, the Stark patent as reissued, at the defendants' instance, is open to a much graver objection than any which can be urged against the plaintiff's patent. Under the Act of 1836, the Stark patent may at any time be repealed by *scire facias* at the suit of the United States, for the fraud to which it owes its reissue.

Mowry vs. *Whitney*, 14 Wall., 434.

Mr. Biddle also contended that the Master erred in reporting that the defendants should assign the Stark patent to the plaintiff. As to this the Master can only say that after a careful reconsideration of the case he feels compelled to adhere to the views stated in his Report.

The Master also had the benefit of a minute and searching criticism of his account ("Exhibit A"), which was very clearly and forcibly presented by Mr. Ackley, with the assistance of the defendant, H. S. Hale, and Mr. Roberts, the defendants' book-keeper.

The defendants' books were produced before the Master, and were referred to in support of the objections. The objections [which are written in red ink on the copy of "Exhibit A," filed herewith] may be classified as follows:—

I.—That the Master allowed the plaintiff royalty upon the springs sold with the bedsteads.

II. That the Master allowed the plaintiff royalty upon bedsteads finished with mirrors and ebony stripes.

Upon these two points, the Master adheres to the views stated on page 10 of his Report.

III.—That some of the bedsteads charged against the defendants, though ordered, were not delivered nor paid for.

IV.—That some bedsteads having been sold and delivered were afterwards returned by the purchasers.

V.—That some bedsteads having been sold were afterwards, at the purchasers' request, exchanged for other bedsteads.

In each of these cases, the evidence of the non-delivery, return, or exchange of the particular bedsteads, were entries in the defendants' books. The Master holds that the plaintiff's right to royalty, under the terms of the contract, attached when each sale was made: and that no subsequent return or exchange of the article sold can be permitted to deprive the plaintiff of his royalty.

The Master has given the defendants credit in "Exhibit

C," hereto annexed, for each item in "Exhibit A" which they have shown not to have been delivered.

VI.—That the Master has in many instances charged the defendants twice over with the sales of the same articles, by taking from different books entries relating to the same sale.

The Master has, in "Exhibit C," credited the defendants with all the erroneous charges which were proved under this head.

VII.—That the Master has included in many items charges for boxing, or for work, or for articles of furniture, not subject to royalty.

The Master has carefully examined each of the items under this head. In each instance there was in the defendants' books a lumping charge, including the bedstead and the articles not subject to royalty. The burden of keeping the account being on the defendants, and there being no means of ascertaining the prices charged on the several articles, the Master was compelled to charge the defendants with the lump sum.

VIII.—That the Master, in some items, has charged the defendants with royalty upon articles other than bedsteads.

The Master has charged the defendants (No. 72) with $30.00 for a plain bed, sold to Mr. Thomas, the entry in the sales-book appearing to so read, but the defendants have shown that the entry really was "3 in. pine board" sold to Mr. Thomas for 30 cents. The Master has credited the defendants, in "Exhibit C," for this error, and also for a crib which was not subject to royalty.

IX.—That the Master has charged the defendants with the returns from the Boston store, at list prices; and with the returns of the Baltimore store, at net prices.

In each case the Master charged the defendants with the actual prices appearing on the face of the returns; but it being admitted before the Master, during the discussion of this objection, that the Baltimore agent deducted 33⅓ per cent. from each sale, without stating it on the face of the return, the Master surcharges the defendants with royalty on that amount.

It must be added in justice to the defendants that they have, with commendable frankness, called the Master's attention to five sales of bedsteads, and also to many sales of springs which had escaped his attention. The Master charges them with royalty on those items.

The Master annexes hereto an account ("Exhibit C"), showing the additional credits allowed to, and charges made against, the defendants. The balance of that account, $233.49, being deducted from $6,788 07, the balance as found by "Exhibit A," leaves $6,554.58, being the amount which, with interest from tenth December, 1878, the Master finds is due from the defendants to the plaintiff. The Master has inserted the last-mentioned amount in the first paragraph of the form of decree herewith submitted.

The Master is of opinion that the defendants' exceptions, so far as they are not sustained by this Supplemental Report, are not well-founded, and he respectfully submits them herewith, for the consideration of the Court.

C. Stuart Patterson,
Master.

[There was annexed to this Supplemental Report an account, correcting errors in former account.]

VI.—OPINION OF COMMON PLEAS UPON REPORTS AND EXCEPTIONS.

EVERITT *vs.* HALE.

In Equity.

Sur Exceptions to Master's Report.

Opinion by THAYER, P. J. April 22, 1882.

A careful and thorough examination of the Master's Report and of the voluminous testimony taken in this case has convinced us of the correctness of the Master's findings, and that the conclusions of law which he has reached are reasonable, just, and entirely in accordance with well-established principles of equity. No doubt whatever rests upon our minds of the bad faith of the defendants in their dealings with the plaintiff. It is proved by a mass of testimony and a concurrence of circumstances which establishes it beyond the possibility of a doubt. Their own uncontradicted acts, letters, and oral communications, convict them of it so plainly that it is incapable of denial. An attentive perusal of the testimony leaves it a self-evident fact which requires neither argument nor demonstration to establish it. They not only broke their express covenant to account justly with the plaintiff, and to pay him monthly his stipulated percentage of the sales, but the evidence shows that they entered into a fraudulent conspiracy, the successive steps in which brought them to the borders, if not actually within the lines, of criminal responsibility. The object of this conspiracy was to deprive the plaintiff of all benefit of his own invention and to appropriate it exclusively to themselves. The means by which it was to be accomplished was the purchase of the Stark patent, which Mason, their own counsel, testified was not infringed by the plaintiff's patent, the fraudulent reissue of that patent with such

cunning devices that it should be made "to cover entirely "the Everitt bedstead," and a secret assignment by Stark to themselves of that which they already owned; to be followed by false and covinous notices to and sham suits against themselves, brought under their own instructions and by their own counsel. All this was duly carried out, was duly discovered by the plaintiff, and is established in all its details in the evidence. The defendants now complain that the Master has reported that they can not be permitted in equity to avail themselves of this fraud, and to consummate it by being allowed to set up this fraudulent instrument as a defense to the plaintiff's demands. Nothing can be plainer than that upon the state of facts here exhibited the plaintiff is entitled by some form of decree to be protected against a deed obtained in the pursuit of this fraudulent and injurious purpose. Sometimes equity affords this protection by requiring the delivering up and cancellation of the fraudulent instrument, sometimes by a perpetual injunction against the use of it. What substantial difference does it make to the defendants whether the plaintiff is protected by such a decree or by a decree requiring him to assign the reissued patent to the plaintiff? The Master has proceeded upon the well-established principle that one who has a common interest with and a confidential relation to another can not avail himself of an outstanding or hostile title or incumbrance to the prejudice of his fellow. Much less can he create one himself. Where he has acted in good faith he will in equity be held to be a trustee of a title obtained for the common benefit, and will be entitled to be reimbursed a proportionate part of the expense of acquiring it; but where he has obtained it for the purpose of defrauding his partner in the adventure he can neither claim any benefit from it himself nor demand indemnity for his outlay. In such cases the wrongdoer is held in equity to be a trustee *ex maleficio* for the interest intended to be defrauded, and equity will compel a conveyance to the *cestui*

que trust without compensation. The maxim that no man shall take advantage of his own wrong prevails in equity even more strongly than at law, and with regard to actual fraud the principles of equity in their application to remedial justice are far more comprehensive. Equity will never permit a person to hold a benefit which he has derived from the perpetration of an actual fraud. Neither will it allow him compensation for it in any form whatever. In equity no man can set up his own iniquity as a defense any more than as a cause of action. Our Reports are full of cases of constructive trusts arising *ex maleficio*, and it is well settled by many decisions that where an advantage has been gained by an actual fraud, the wrongdoer, who is converted into a trustee *ex maleficio*, is in no condition to demand indemnity for his outlay. These principles have often been applied in this State in various forms of procedure in equity and at law. Most frequently in actions of ejectment, as in Sharp *vs.* Brady, 4 Casey, 433, and Seylor *vs.* Carson, 19 Smith, 81, and the numerous cases there cited by Judge Williams, in which a purchaser acquiring a title by fraud at a sheriff's sale has been held to be a trustee *ex maleficio* for the person wronged, who might recover against him without a return of the purchase-money paid. It is often applied in bills *quia timet*, of which application O'Neil *vs.* Hamilton, 8 Wright, 18, is an illustration, where a fraudulent grantee was compelled to make a conveyance, although he had paid $1000 for his title. Such a trust *ex maleficio* arises whenever a person holding fiduciary relations to another abuses the confidence reposed in him by taking and claiming for himself property which he ought to have applied to the protection of their common interest. The rule was clearly laid down by Sharswood, J., in Duff *vs.* Wilson, 22 Smith, 442, and the other cases cited by the Master in his report. It is more strongly applied in equity than at law, for the maxim there is, he who has done iniquity shall not have equity. It is

apparent, therefore, that even if the construction, upon which the defendants so strenuously insist, should be put upon the 5th and 7th Articles of the Agreement, and it should be conceded that their covenants to assign in case of failure to comply with their contract extended only to improvements made by the parties, their case is no better, for they are still, by reason of the actual fraud practiced, within the operation of the equitable principle which makes them trustees *ex maleficio*, without any title to compensation. But in the present case the defendants created themselves the very title which is alleged to be hostile to the plaintiff's rights, for without the reissue of the Stark patent which *they* obtained the plaintiff would have been in no danger. The plaintiff is entitled therefore to relief and protection against the defendants' fraudulent reissue of the Stark patent. He might have it by a perpetual injunction against the assignment or use of that patent, or he may have it upon the principles already adverted to in the form of a decree for a compulsory assignment of it to the plaintiff. The form of the relief is not very material, for the result is the same in either case. The Master has seen fit to recommend the latter alternative. In this we think he is fully sustained both by reason and authority, and by the evidence in the cause, and we see no reason to dissent from his conclusions in that respect.

We are also of opinion that the defendants have no just ground of complaint against the Master for the manner in which he has settled and stated the account. The royalty was by the terms of the agreement chargeable on the price of the completed bedstead as a whole, whether expensively or plainly finished, and including springs, ornaments, and all that constituted the complete bedstead when sold. It was not upon any bedstead of a particular pattern, but "upon all the said patented bedsteads made and sold by them." We see no reason to doubt the cor-

rectness of the Master's statement that he has credited the defendants in his supplemental report with all the bedsteads shown not to have been delivered. It clearly appears also upon a careful comparison of the duplicate charges, contained in the defendants' printed statement of those charges submitted to the Court, with the supplemental report submitted by the Master (Exhibit C), that they have all been corrected in that report. A careful examination of the case and of the forty-three exceptions filed by the defendants, has brought us to the conclusion that none of the exceptions are sustained. Let a decree therefore be drawn up for the plaintiff in the form reported by the Master on page 52 of his report, corrected as to the amount of the defendants' indebtedness according to the result reached by the Master in his supplemental report.

Exceptions dismissed.

VII. FINAL DECREE IN COMMON PLEAS.

And now, April 22d, 1882, this cause came on to be heard at this term upon bill, answer, proofs, and the reports of the Master, with the exceptions filed thereto on behalf of the defendants. And the Court having heard the arguments of counsel thereon, upon consideration thereof it is ordered, adjudged, and decreed as follows:

First. That all the said exceptions be dismissed, and that the said report of the Master be confirmed.

Second. Upon the account, as stated, of the defendants' sales under the plaintiff's patent, and the contract of sixteenth April, 1874, the defendants are indebted to the plaintiff in the sum of six thousand five hundred and fifty-four dollars and fifty-eight cents ($6,554.58), with interest from tenth December, 1878, the date of the entry of the

interlocutory decree in this cause, and the defendants are hereby directed to forthwith pay to the plaintiff the said sum of six thousand five hundred and fifty-four dollars and fifty-eight cents, with interest as aforesaid.

Third. The defendants are hereby directed forthwith to assign and deliver to the plaintiff the Letters Patent for an improvement in folding bedsteads, numbered 148,940, and dated twenty-fourth March, 1874.

Fourth. The defendants are hereby directed to forthwith assign and deliver to the plaintiff the following Letters Patent, to wit: Number 159, 908, granted sixteenth February, 1875, to H. W. Curtis; Number 181,450, granted twenty-second August, 1876, to C. Kilburn; Number 182,465, granted nineteenth September, 1876, to S. D. Newcomb; and Number 210,777, granted tenth December, 1878, to Henry S. Hale.

Fifth. The defendants are directed hereby forthwith to assign and deliver to the plaintiff the reissued patent numbered 8,161, and granted ninth April, 1878, to Andrew Stark.

Sixth. The costs of the cause are directed to be paid by the defendants.

M. R. T.

April 22, 1882.

VIII. ASSIGNMENT OF ERRORS IN SUPREME COURT, UPON APPEAL.

1. The Court erred in dismissing the defendants' exceptions to the Master's report.

2. The Court erred in confirming the Master's report.

3. The Court erred in not confirming and sustaining the defendants' exceptions to the Master's report.

4. The Court erred in not dismissing the Master's report.

5. The Court erred in decreeing that the defendants were indebted to the plaintiff in the sum of six thousand five hundred and fifty-four dollars, with interest from December, 1878, and directing them to pay the same to the plaintiff forthwith.

6. The Court erred in decreeing and directing that defendants forthwith assign and deliver to the plaintiff the Letters Patent for an improvement in folding bedsteads, numbered 148,940, and dated twenty-fourth March, 1874.

7. The Court erred in directing and decreeing that defendants forthwith assign and deliver to plaintiff the following Letters Patent, to wit: Number 159,908, granted sixteenth February, 1875, to H. W. Curtis; Number 181,450, granted twenty second August, 1876, to C. Kilburn; Number 182,465, granted nineteenth September, 1876, to S. D. Newcomb, and Number 210,777, granted tenth December, 1878, to Henry S. Hale.

8. The Court erred in directing and decreeing that defendants forthwith deliver to the plaintiff the reissued patent, Number 8,161, and granted ninth April, 1878, to Andrew Stark.

9. The Court erred in directing and decreeing that the costs of the cause be paid by defendants.

10. The Court erred in not decreeing that the costs of the cause be paid by plaintiff.

IX. OPINION AND JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA,

On the Appeal of Hale *et al.* (delivered January 29, 1883).

HALE & KILBURN MANUFACTURING COMPANY'S APPEAL.

Appeal from decree of Common Pleas, No. 4, of the County of Philadelphia.

In Equity.

Per Curiam.

Notwithstanding the full and able argument of counsel for the appellants, we are unable to discover any error in this decree. The evidences of fraud on the part of the company are so manifest as to fully vindicate the conclusion of the Court and to justify the decree.

Decree affirmed and appeal dismissed at the costs of the appellants.

X. PETITION OF HALE ET AL. TO SUPREME COURT OF PENNSYLVANIA, FOR A REARGUMENT.

IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT.

July Term, 1882. No. 90.

Appeal of the Hale & Kilburn Manufacturing Co.

HENRY S. HALE *et al.* respectfully present this their petition for a reargument of the above case so far as concerns the assignment of the patents, and show as reasons therefor:

I. That the Stark patent was issued on the 22d day of August, 1865, whereas the patent to Everitt, the plaintiff below, was issued on the 24th day of March, 1874, almost nine years thereafter.

II. That the evidence shows that the appellants purchased the Stark patent by advice of counsel to avoid an action for infringement, with their own money, after notice to Everitt that it was desirable to purchase said patent, and Everitt had declined to join them in the purchase thereof.

III. That at most equity will consider the Stark patent as a joint asset, and the plaintiff does not charge more than this in his bill, as appears from the following statement in paragraph 9 of the amended bill: "And your orator charges that the relation which existed between the said defendants and himself were such that they could not, during

the existence thereof, acquire title to said Stark's patent adversely to your orator; but they must be presumed to have acted for the joint interest of all interested in the manufacture of folding beds under the said agreement."

IV. That the appellants deny, and there is no evidence to show, that the patents ordered to be assigned with the Stark and Everitt patents are improvements on Everitt's bedstead, and subject to assignment by the terms of the agreement.

V. That counsel for appellants had not sufficient time allowed them for the argument and discussion of these questions before the Court.

GEORGE W. BIDDLE,
Of Counsel for Appellee,
The Hale & Kilburn Mfg. Co.

Jan. 30, 1883. C. KILBURN, Pres.

XI. PETITION OF HALE ET AL. TO THE CHIEF JUSTICE OF PENNSYLVANIA

For a Writ of Error to the Supreme Court of the United States.

To the Honorable Ulysses Mercur, Chief Justice of the Supreme Court:

The Petition of Henry S. Hale, Artemus Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company and the Hale & Kilburn Manufacturing Company, respectfully showeth—

That your petitioners brought suit into the Supreme Court of Pennsylvania for the Eastern District, to July Term, 1882, No. 90, by writ of Certiorari to and appeal from a decree of the Court of Common Pleas of Philadelphia, No. 4, of September Term, 1878, No. 564, in which suit in said Supreme Court your petitioners were appellants, and defendants in the said Court of Common Pleas, and Elisha E. Everitt was appellee in said Supreme Court, and complainant in said Court of Common Pleas.

That the said suit in said Court of Common Pleas was by Bill in Equity, charging among other things that your petitioners were bound and legally liable to deliver and assign to the plaintiff, Elisha E. Everitt, sundry Letters Patent granted by the United States, respectively to wit: No. 159,908, granted 16th February, 1875, to H. W. Curtis; No. 181,450, granted August 22d, 1876, to C. Kilburn; No. 182,465, granted September 19th, 1876, to S D. Newcomb; No. 210,777, granted December 10th, 1878, to Henry S. Hale, and No. 8,161, granted April 9th, 1868, to Andrew Stark; and were also liable to account to the plaintiff for royalty on certain articles manufactured by your petitioners, and further prayed an injunction to restrain your petitioners from manufacturing said patented articles under said patents. And your petitioners averred in their answer that they were not liable as charged, because the claim and demand of the plaintiff, Elisha E. Everitt, was founded upon a patent which was an infringement of the patents owned by your petitioners, and was invalid and void, and that many of the said manufactured articles were not manufactured under the patent of the said plaintiff.

That the said Court of Common Pleas, of Philadelphia County, rendered judgment against your petitioners on the 22d day of April, 1882, in the sum of six thousand five hundred and fifty-four dollars and fifty-eight cents ($6,554.58) with costs, and further ordered, adjudged and decreed that your petitioners should deliver and assign to the plaintiff,

Elisha E. Everitt, the aforesaid Letters Patent belonging to your petitioners, and further enjoined your petitioners from manufacturing said articles as aforesaid under the patents owned by them.

That on the twenty-ninth day of January, 1883, the Supreme Court of Pennsylvania, sitting at Philadelphia, ordered said judgment to be affirmed, and afterwards, on the twenty ninth day of January, 1883, the said judgment was duly entered and recorded in the Eastern District of Pennsylvania aforesaid.

That the said judgment of the said Supreme Court is a judgment of the highest court of record of the Commonwealth of Pennsylvania.

That the judgment of the said Court is final.

That the right, title, privilege and immunity claimed by your petitioners, defendants and appellants aforesaid, were claimed under the Constitution of the United States, Article I, Section 8, providing, among other things, that Congress shall have power to promote the progress of science and useful arts by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries, and Article III, Section 2, of said Constitution, providing that the judicial power of the United States shall extend to all cases in law and equity arising under the Constitution and laws of the United States, and under the Statute laws of the United States, referring to the said subject matters, all of which appears of record. That the decision and judgment of the Supreme Court of Pennsylvania aforesaid was against the right, title, privilege and immunity so claimed.

That the said Court of Common Pleas of Philadelphia and the Supreme Court of Pennsylvania have and had no jurisdiction over the subject matter of the controversy, but that the jurisdiction is, by the Constitution and the Statute law of the United States, exclusively vested and cognizable in the Federal Courts, and therefore the said proceedings

and judgment aforesaid are null and void, and contrary to the Constitution and Statute law of the United States in the premises.

Your petitioners therefore pray for the allowance of a writ of error to the Supreme Court of Pennsylvania, in order that the said judgment of the Supreme Court of Pennsylvania may be re-examined and reversed or affirmed in the Supreme Court of the United States.

And they will ever pray.

(Signed) HENRY S. HALE,
ARTEMUS KILBURN,
J. WARREN HALE,
CHENEY KILBURN,
WARREN HALE,

who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company.

THE HALE & KILBURN MANUFACTURING CO.,

[SEAL] By CHENEY KILBURN, *President.*

Attest:

J. WARREN HALE, *Secretary.*

[Affidavits in usual form annexed.]

122-627

IN THE

SUPREME COURT

OF THE UNITED STATES.

October Term, 1883. No. 951.

111

HENRY S. HALE, *et al.*, AND THE HALE & KILBURN MANUFACTURING COMPANY,
Plaintiffs-in-Error,

vs.

ELISHA E. EVERITT,
Defendant-in-Error.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

Brief of the Defendant-in-Error, in reply to the argument for the Plaintiffs-in-Error upon the Motion to dismiss the Writ of Error for want of jurisdiction, etc.

WENDELL P. BOWMAN,
J. HUBLEY ASHTON,
E. COPPÉE MITCHELL,
Of Counsel for Defendant-in-Error.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1883. *No.* 951.

HENRY S. HALE, ARTEMUS KILBURN, J. WARREN HALE, CHENEY KILBURN, and WARREN HALE, who survived H. W. CURTIS, with whom they traded as HALE, KILBURN & COMPANY, and the HALE & KILBURN MANUFACTURING COMPANY, *Plaintiffs-in-error*,

vs.

ELISHA E. EVERITT, *Defendant-in-error.*

BRIEF of the Defendant-in-error, in reply to the Argument for the Plaintiffs-in-error upon the Motion to Dismiss the Writ of Error for want of Jurisdiction, etc.

In the "Statement of the Case" given by us in our brief, we referred to the various portions of the record which supported our averments of fact. It was impossible for us to know, in advance of some statement from the counsel for the plaintiffs-in-error, the points upon which they intended to rely to maintain the jurisdiction of the Court. Now that we have their Brief, we are enabled to be more definite than before in pointing out to the Court the grounds of our motion to dismiss. We beg leave, therefore, to present this reply;

and we will follow the argument made by the plaintiffs-in-error point by point.

FIRST.

They say that the validity of the Everitt patent and the question of its anticipation by prior patents is directly raised by the pleadings in this cause.

The bill contained no averment that Everitt's patent was valid. It is true that in the seventh paragraph of the answer (see Copies of Record filed herewith, page 12) and the eighth paragraph of the answer (*Ib.*, p. 13) the plaintiffs-in-error did argumentatively, and as an inducement to other averments, say that the plaintiff's patent was invalid and utterly worthless; but the *issue* made by the *answer* was upon the allegation of the bill, in its eighth paragraph, that the plaintiffs-in-error had purchased the Stark patent *with the purpose and intent of defrauding the defendant-in-error.*

The answer *admitted* that the plaintiffs-in-error had obtained the control of the Stark patent referred to in the bill, but *denied* the *fraud* imputed to them in the bill, "*and they deny that the same was done fraudulently, but on the contrary the said purchase and contract were made in perfect good faith*" (*Ibid.*, p. 13).

The issue thus made by the pleadings was that of *fraud* on the part of the plaintiffs-in-error in securing control of the patents referred to.

That issue the Master, in his report, found in favor of the defendant in-error as follows:—

"The Master, therefore, finds that the defendants' negotiations with Stark were concealed from the plaintiff, that he was not offered an opportunity to participate in the purchase of the Stark patent, and that the defendants secretly purchased that patent in their own right for the purpose of

using it as a means to compel the plaintiff either to abandon his patent or to so modify his contract with them as to let them manufacture under his patent for a diminished royalty. That this action of the defendants was an actual fraud upon the plaintiff is too clear for argument" (*Ibid.*, p. 66).

The Master reported, upon these grounds, that the defendants below be directed to assign to the plaintiff the Stark patent and all their rights thereunder, as prayed in his amended bill (*Ibid.*, p. 69).

It is to be observed, moreover, that nowhere in the answer is the invalidity of the plaintiff's patent set up *as a defense to the relief which is prayed.* On the contrary, in the ninth paragraph of the answer (*Ibid.*, p. 13), the plaintiffs-in-error confess judgment and submit to a decree of the Court as to all the prayers of the bill, except that part of the second prayer which requires that they should assign to Mr. Everitt the patents for improvements. The interlocutory decree made upon the bill and answer (see Copies of Record filed herewith, p. 15) recites this confession of judgment contained in the answer, and was made expressly upon that ground. How, then, could the validity of the patent be a question raised by the pleadings, since the pleadings themselves withdraw the question from the consideration of the Court? This was the view taken of the subject by the Master in his report (see Copies of Record filed herewith, p. 38), in which he expressly held that the State Courts have no jurisdiction to determine the question as to the validity of the patent or to decide the question of infringement.

In the 25th exception to the Master's Report filed by the plaintiffs-in-error, they objected to his ruling upon this subject; whereupon, in his supplementary report (see Copies of Record filed herewith, p. 81, *et seq.*), the Master reiterates his conclusion, and gives his reasons for it very clearly. And he distinctly holds that the question of the validity of the plaintiff's patent and of its infringement upon the Stark patent *is immaterial* in this case (*Ibid.*, p. 81, *et seq.*). The

portion of the Master's supplementary report above referred to is conclusive that the State Court did not pass upon the validity of the plaintiff's patent, nor upon the question of infringement, but that they positively refused to do so, inasmuch as, so far from being necessary, it was not even incidentally material to the decision of the case.

SECOND.

Plaintiffs in-error say, that the Court had no jurisdiction to grant the injunction in this case.

I. It should be observed that no Federal question was raised or decided by the State Court on the subject of the injunction, inasmuch as the plaintiffs-in-error, by their answer above mentioned, withdrew the question of injunction from the consideration of the Court. Even if it should be held that the State Court had no jurisdiction to decree the injunction, the result of the pleadings would simply be to make the injunction void for want of jurisdiction, and not to give the plaintiffs-in-error a right to review the judgment of the Court upon a question which they expressly withdrew from its consideration by the confession of judgment, and which, consequently, was never decided. How could the Court pass upon the question whether or not the plaintiff was entitled to the injunction, when the question was expressly withdrawn from it by the persons to be affected by it? If the plaintiffs-in-error had so framed their pleadings as to cause the State Court necessarily to consider the question whether there should be an injunction, then it might be said with some force that the jurisdiction of the Court to decide such a question would be involved in the granting of the decree; but it would be a mockery of justice to allow a party to a litigation, by his confession, to withdraw, what he now claims to be, a vital point from the consideration of the Court—to confess judgment upon that point—and then to ask that that judgment should be reviewed in a Court of

appellate jurisdiction. The decree of the State Court granting the injunction may be void for the want of jurisdiction, but after the confession of judgment by the plaintiffs-in-error, it is not reviewable.

II. Moreover, under the circumstances of this case, *the injunction which was granted was within the power of the State Court*. The decree, so far as the injunction is concerned, is in these words:—

(See Copies from the Record filed herewith, p. 16).

"And it is further ordered that an injuction issue directed to "the defendants, commanding and enjoining them not to dispose "of the said patent and improvements thereon to any person or "persons other than the plaintiff, and from manufacturing bed-"steads and other furniture under the said patent, and from selling "any bedstead made under said patent and improvements, manu-"factured after the date of this decree."

Now it might well be said to one who had previously enjoyed the right to manufacture under a patent, by reason of having an interest in the patent, "You have no longer "any interest in this patent. You have forfeited it, and "you must no longer manufacture bedsteads and other fur-"niture under this patent." That would not prevent the persons enjoined from manufacturing bedsteads of the same kind, if they had any right to do so *other than that which they obtained by reason of their interest in the patent.* It did not decide that the patent was valid. It did not decide that manufacturing bedsteads of the same kind would be an infringement of the patent. It simply declared, as the Court had a right to do, that the *contract relations* of the plaintiffs-in-error to that patent had ended, and that they had no longer any right to make use of it in the manufacture of bedsteads. At the time the decree was granted, the plaintiffs-in-error had been carrying on the business of manufacturing bedsteads under this patent for some years, and it was represented to the Court of Common Pleas that they might have

on hand a stock of bedsteads which they had lawfully made while they had a right to use the patent, and therefore that the decree ought not to prevent them from selling such bedsteads as they had made before its date, but only to end the claim of the plaintiffs in error to manufacture under the patent *in the future*. This view was adopted by the Court, as will be seen by looking at the terms of the decree. It forbids any further manufacturing, but forbids selling only those bedsteads "manufactured after the date of this decree." The distinction between *making* bedsteads, and *selling* those already made, is an important one, and seems to have been entirely lost sight of by the plaintiffs-in-error in their brief of argument upon this motion.

THIRD.

Plaintiffs-in-error say, "The Court below had no "jurisdiction to make a decree, ordering defendants "to pay to the plaintiffs, *inter alia*, $979.88 for the "sale of bedsteads and articles of furniture made by "them under the plaintiff's patent after the con-"tract relations between the parties had been "determined."

As to this it will be seen by reference to the Master's report and the testimony, that the plaintiffs-in-error have entirely misapprehended the action of the Master, because they have overlooked the distinction just referred to between *making* bedsteads and *selling* those already made. The decree of the Common Pleas was made Dec. 9, 1878 (pp. 15, 16). The account taken by the Master comes down to March 6, 1879. If then the defendants were stopped by an injunction from making bedsteads on the 9th of December, 1878, how could any account be taken of such bedsteads *made after that time?* None could be manufactured under the patent. The whole case shows that the account taken

by the Master, of bedsteads sold after the date of the decree, must have been of bedsteads manufactured by the plaintiffs-in-error under the Everitt patent, before the termination of the contract relations between them. It is believed there are yet some bedsteads manufactured under the contract and before it was ended, not sold until after March 6, 1879, for which the plaintiffs have given no account, and for which they must still account in the Court of Common Pleas of Philadelphia.

FOURTH.

The plaintiffs-in-error say, "That the Court had "no jurisdiction to find that the Everitt patent did "not infringe the Stark patent as originally granted, "but that the Stark patent had been reissued so as "to cover the Everitt patent, and thus render the "latter patent an infringement of the reissued Stark "patent, and to decree on this ground that the "defendants reassign the Stark patent to the "plaintiff."

The decree is stated accurately enough. It is true that the Court did order the plaintiffs-in-error to reassign the Stark patent to Mr. Everitt, but not upon the ground given by the learned counsel for the plaintiffs-in-error in their brief. They were ordered to assign the Stark patent *because of the fraud* which they committed, and which is fully set forth in the Master's report (see Copies of the record filed herewith, pp. 35, *et seq.*) concluding as follows on p. 65:—

The falsity of the defendants' answer as to assignment of the Stark patent; the conflict between their testimony and that of the plaintiff and Mr. Stevens; the contradiction of their testimony on other points, by their own letters; and their conspiracy with Mr. Mason and Mr. Stevens, forbid the Master to credit their testimony as to their purchase of the Stark patent in good

faith, and after notice to the plaintiff. If the Master were otherwise in doubt, as he is not, the admissions of the defendant, H. S. Hale, and of Mr. Mason, with regard to the want of practical value in the Stark patent in its original form, and the purpose of defendants to buy it to reissue it, so as to cover the Everitt patent, would convince him that the defendants could not have offered the plaintiff the opportunity of participating in that purchase.

The Master therefore finds, that the defendants' negotiations with Stark were concealed from the plaintiff; and that he was not offered an opportunity to participate in the purchase of the Stark patent; and that the defendants secretly purchased the patent in their own right for the purpose of using it as a means to compel the plaintiff either to abandon his patent, or to so modify his contract with them as to let them manufacture under his patent for a diminished royalty. That this action of the defendants was an actual fraud upon the plaintiff is too clear for argument. The rule of equity upon this subject is perhaps best stated in the American Notes to Keech *vs.* Sanford, 1 Leading Cases in Equity, p. 92, in these words:—"Wherever one person is placed in such relation to another, by the act or consent of that other, or the act of a third person, or of the law, that he becomes interested for him, or interested with him, in any subject of property or business, he is prohibited from acquiring rights in that subject antagonistic to the person with whose interests he has become associated, ... and equity vindicates this in the form of a trust." (Master's Report, p. 65.)

The defendants had bought Stark's patent with an intention to use it to cheat the plaintiff, and *it was upon this fraud*, and according to the doctrine of equity based upon the fraud, that the Master advised the Court to make the decree that the Stark patent be assigned to Everitt. It was upon this equity arising from fraud and upon that alone, that the Master's Report was confirmed by Judge Thayer in the Court of Common Pleas (see Judge Thayer's opinion in Copies of the Record filed herewith, p. 87), and it was upon the fraud alone, that the judgment of the Supreme Court of

Pennsylvania affirmed the decree so made. For the fraud of the plaintiffs-in-error is the only ground mentioned in the short *per curiam* opinion (see Copies from the Record filed herewith, p. 94).

We have not undertaken to argue in any way the question whether the State Courts were right or wrong in their judgment upon the case as presented to them. It is not material here. If they should go entirely astray upon questions exclusively within their jurisdiction, it might be matter of regret, but the Supreme Court of the United States cannot be called upon to correct such errors.

We have confined ourselves rigidly to the one point in issue upon this motion; *i. e.*, whether there was a Federal question passed upon by the State Court and material to the determination of the case—and we confidently submit that there was none.

J. Hubley Ashton,
E. Coppee Mitchell,
Wendell P. Bowman,
Counsel for Defendant-in-Error.

IN THE

SUPREME COURT

OF THE UNITED STATES.

October Term, 1883. No. 951.

HENRY S. HALE, *et al.*, AND THE HALE & KILBURN MANUFACTURING COMPANY,
Plaintiffs-in-Error,

vs.

ELISHA E. EVERITT,
Defendant-in-Error.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

Motion of Defendant-in-Error to dismiss the writ of error, etc., and Brief in support of the Motion.

J. HUBLEY ASHTON,
E. COPPÉE MITCHELL,
Of Counsel for Defendant-in-Error.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1883. No. 951.

HENRY S. HALE, ARTEMUS KILBURN, J. WARREN HALE, CHENEY KILBURN, and WARREN HALE, who survived H. W. CURTIS, with whom they traded as HALE, KILBURN AND COMPANY, and the HALE & KILBURN MANUFACTURING COMPANY, *Plaintiffs-in-error*,

vs.

ELISHA E. EVERITT, *Defendant-in-error.*

Now, to wit, November 8, 1883, comes Elisha E. Everitt, the defendant-in-error in the above entitled cause, by his counsel, appearing specially herein for the purpose of this motion, and moves the Court to dismiss the writ of error in the above-entitled cause on the ground that this Court has no jurisdiction therein, inasmuch as no Federal question is presented in the record accompanying the said writ returned from the Supreme Court of Pennsylvania, which is cognizable in the Supreme Court of the United States; or to affirm the judgment of the Supreme Court of Pennsylvania, in the said cause, on the ground that although the said record may show that this Court has jurisdiction, it is manifest that the writ of error was taken for delay only,

and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

J. HUBLEY ASHTON,
E. COPPEE MITCHELL,
Of Counsel for ELISHA E. EVERITT,
Defendant-in-error.

[Defendant-in-error has caused to be printed, for the purpose of the foregoing motion and the following brief, the material portions of the record filed in this cause.

These extracts from the record will be handed to the Court with the motion and brief.

The references in the brief are to the pages of the record printed by defendant-in-error.]

BRIEF FOR DEFENDANT-IN-ERROR IN SUPPORT OF ABOVE MOTION TO DISMISS THE WRIT OF ERROR IN THE ABOVE CAUSE.

STATEMENT OF THE CASE.

This is a writ of error to a judgment or decree of the Supreme Court of Pennsylvania, rendered January 29, 1883, affirming a decree of the Court of Common Pleas, No. 4, of the City and County of Philadelphia (rendered April 22, 1882,) in a suit in equity instituted by the defendant-in-error, Elisha E. Everitt, against the plaintiffs-in-error, to enforce his rights under a contract, made on the 16th of April, 1874, between him and Hale, Kilburn & Company, plaintiffs-in-error, relative to an improvement in WARDROBE BEDSTEADS invented by Mr. Everitt, and patented to him on March 24, 1874.

On behalf of the defendant-in-errror we have filed a motion (of which a copy is given above) to dismiss this writ of error for want of jurisdiction under Sec. 709 of the Revised Statutes, or to affirm the judgment or decree of the Court below under the 6th Rule of this Court.

It is manifest from an inspection of the record (all the material portions of which are printed and submitted with this motion and this brief) that no Federal question was decided by the Court below on rendering its judgment, or decree, in this case; and that the writ of error was sued out by plaintiffs-in-error, simply for delay, and to avoid the execution of the decree of the Court of Common Pleas, as affirmed by the Supreme Court of Pennsylvania.

The foundation of the bill filed by Everitt, defendant-in-error, on September 24, 1878, in the Common Pleas, was, as we have said, a written agreement between him and Henry S. Hale, Artemus Kilburn, J. Warren Hale, H. W. Curtis, Cheney Kilburn, and Warren Hale, of the city of Philadelphia, and there trading as Hale, Kilburn & Company, dated April 16, 1874, relative to certain Letters Patent, granted to Everitt, for an improvement in Folding or Wardrobe Bedsteads, dated March 24, 1874, and numbered 148,940.

This agreement is set forth at length in the bill (see bill, record herewith, p. 2).

It will be noticed that the agreement itself is an executed assignment, by Everitt, of the entire right, title and interest in the patented invention for the whole of the United States, with a covenant for further assurance, if required.

By this agreement Hale *et al.* bound themselves—

1. To pay to Everitt seven per cent. royalty on the wholesale prices received by them for all said patented bedsteads made and sold.

2. To pay to him one-half of the net profits from the sale of licenses.

3. To account for in writing and pay over whatever was due to Everitt at the end of each month.

4. To keep just and true books of account open to his inspection, showing the number of bedsteads made and sold, the prices received, the licenses granted, and the amounts received for them.

5. To use all reasonable efforts to promote the sale of the bedsteads.

6. That the bedsteads should be known and advertised exclusively as the "Everitt Bedstead."

7. That all improvements in said patented bedsteads made by any of the parties to the agreement should be held and enjoyed subject to the terms of the agreement.

It was further provided that in case of suits for the maintenance of the Letters Patent, Everitt should pay half the expenses and Hale *et al.* the other half.

Further, that if Hale *et al.* or their assignees should fail to account for and pay over moneys becoming due to Everitt under this agreement, and continue in such default for sixty days after demand, or if they should neglect to use all reasonable efforts to promote the sale of the bedsteads, then they should forfeit all their interest in the Letters Patent, and should reassign the same by proper instrument in writing to Everitt.

It was further agreed that if the Letters Patent should be adjudged invalid, or to infringe on other patents, Hale *et al.* might, at their option, surrender to Everitt all rights and claims under the agreement, and thereupon be released from their covenants.

These are, in brief, all the material stipulations of the agreement.

The defendants in the bill were the plaintiffs-in-error here, survivors of the firm of Hale, Kilburn & Co., and the Hale & Kilburn Manufacturing Company, composed of the members of the said firm, to whom the rights of the former to the Everitt patents, under the agreement of April 16, 1874, had been assigned.

The bill charged that the defendants, since the date of the said agreement, had been manufacturing these patent bedsteads, and had secured patent rights for several improvements thereon; and that the defendants had refused to account for large quantities of said patented bedsteads made and sold by them, and had refused to pay royalties thereon, and had remained in default more than sixty days.

It charged that the defendants, with intent to *defraud* the plaintiff, *Everitt*, had purchased from one Andrew Stark a patent issued to him, and reissued in his name, for an invention similar to the plaintiff's; that a suit had been begun

in the Circuit Court of the United States in the name of Stark against the defendants for an injunction to restrain them from using the plaintiff's patent; that this suit was commenced and promoted by the defendants themselves, or some of them, and at their expense; and that the name of the said Stark, as plaintiff therein, was made use of by them for the purpose of affording the defendants an excuse to hinder and delay the plaintiff in the collection of his said royalty, and to enable them to deprive him of his just rights under the said patent, improvements, and agreement.

The bill prayed:—

1. That an account be taken of all bedsteads made and sold by defendants, and money received therefor, after the date of the said agreement, and that they be directed to pay to the plaintiff what moneys should upon such account appear to be due from them to him.

2. That defendants be ordered to reassign to plaintiff said Letters Patent, and all improvements made thereon by defendants, and all right to use said patented invention.

3. That the defendants be restrained from disposing of said patent, and from making or selling bedsteads under the said Letters Patent, or improvements thereon.

In consequence of later developments, an amendment to the bill was allowed by the Court, and filed on the 5th of May, 1879 (see record herewith, p. 14).

By this amendment it was charged that Hale *et al.* claimed that as the owners of the Stark patent they had the right to manufacture folding-beds substantially in the same manner as they had been doing under their agreement with the plaintiff, without paying the plaintiff anything therefor; that the relations which existed between the defendants and the plaintiff were such that the defendants could not, during the existence thereof, acquire title to said Stark's patent, adversely to the plaintiff, but they must be presumed to have acted for the joint interest of all inter-

ested in the manufacture of folding-beds under the said agreement.

They thereupon added the following prayer for relief:

"That the said defendants be decreed to assign to the plaintiff the said Stark's patent, and all rights thereunder.'

The answer, filed November 22, 1878, admitted the allegations of the bill, with the following exceptions:

The answer denied that defendants had refused to account for any or all bedsteads manufactured under said agreement, and averred that they are now, and have always been, ready and willing to account for every article so sold by them. Appended to the answer was an account of all bedsteads sold since the last account was rendered. That the account preceding that appended to answer was accepted by plaintiff without objection, and payment made in accordance therewith, and a mutual settlement made between them.

The answer further averred that in the former accounts were included, by mistake, many bedsteads not covered by plaintiff's patent, and that the payments made thereon were made by mistake. That the account appended to the answer also includes many bedsteads not covered by plaintiff's patent, distinguished by broadface type, and protested that defendants were not liable to pay royalty on bedsteads so distinguished.

The answer denied that plaintiff had ever been refused access to their books to ascertain the amount due him.

It averred that defendants, in person and by attorney, tendered to plaintiff an assignment of his patent, but that he had refused to receive or accept it, and that defendants deposited at the time of filing their answer, said reassignment in the office of the Prothonotary of the Court of Common Pleas, subject to plaintiff's order.

They denied that the improvements by them were on any of the features covered by plaintiff's patent, but that they

were on other parts not in any way connected with the claims of plaintiff.

The answer averred that defendants entered into the agreement with plaintiff, in good faith, believing that his patent was good and valid in the law, and not subject to the claims of other patents, on which the plaintiff's patent was an infringement. That they were obliged to buy at great cost one of such patents, belonging to one Andrew Stark, and had contracted for the control of another, owned by Sebeus C. Maine.

That before said purchase or contract to control said patent rights, the plaintiff was informed of the facts, and asked to participate in said purchase, but he refused.

By the ninth paragraph of the answer the *defendants confessed judgment* and submitted to a decree in favor of the plaintiff as to all the prayers of the bill, except that part of the second prayer referring to the patents for improvements.

On December 10, 1878, the Court of Common Pleas entered upon the bill and answer an interlocutory decree, directing (1) a reference to the Master to take an account of the bedsteads manufactured after April 16, 1874, under the patent and improvements referred to in the bill; (2) an injunction as prayed for; (3) a reference to the Master to take testimony upon the matters contained in the 2d prayer of the bill, and to report the same and the facts relating thereto, and a further decree, etc.

(See the decree, record herewith, p. 15.)

The hearings before the Master, under this decree, began on December 18, 1878, and lasted until March, 1881.

His report (which is printed in full in the record submitted herewith, pages 19—69), shows that the evidence, which was very voluminous, was sifted and considered with the greatest care.

The followed state of facts was developed before the Master:—

The patent of defendant-in-error was granted March 24, 1874. It was not the first patent on the subject of folding-beds; several preceded it, among which was one to Stark, dated in 1865. On the 16th of April, 1874, the formal contract between Everitt and Hale *et al.*, which is the foundation of this suit, was prepared by Hale's counsel and signed by the parties.

About six months after the agreement was made, and after Hale *et al.* had fully satisfied themselves of their safety in proceeding to expend money in manufacturing bedsteads, they commenced active operations under the agreement. Every one of the covenants contained in the agreement to be kept by Hale *et al.* was broken. They did not keep just and true books of account. The books which they kept were not open to Everitt at any time, but were systematically refused to him. Their books were not kept to show the items mentioned in the agreement. They did not render to Everitt just accounts at the end of each and every month, nor did they pay him seven per cent. on the wholesale prices received by them for the sale of bedsteads. They granted licenses and received money therefor, of which they gave him no account whatever. They changed the name of the bedstead in the advertisements and circulars, calling it the "Champion Folding Bed," instead of the Everitt Bedstead. And from the very beginning, to use the words of Judge Thayer, in his opinion, "they entered into a fraudulent conspiracy to defraud Everitt of all benefit of his own invention and to appropriate it exclusively to themselves; the successive steps in which brought them to the border, if not actually within the line, of criminal responsibility." (See the Opinion, record herewith, p. 87.)

The patented bedstead proved to be a great success. It was introduced into all parts of the country, and the manu-

facture and sale of it became a large and flourishing business. During the later years, the amount paid to Everitt (even with the reductions unfairly taken from him by Hale *et al.*, through their peculiar methods of accounting), was not less than $2400 a year, and Hale *et al.*, as early as the summer of 1877, began to conceive a plan by which to get rid of paying to Mr. Everitt this large sum of money. They employed a mechanical inventor, Asher B. Stevens, to get up a new bedstead that would supersede Everitt's, and enable them to get along without using his patent. In the course of his examination of the subject, Mr. Stevens saw a drawing of the Stark bedstead in the Patent Office Report, and showed it to Hale *et al.*, and they thereupon directed him to open negotiations with Stark, with the view of buying his patent. At the same time they directed him to consult their counsel, Mr. Rodney Mason, of Washington, and to act under his advice in the preparation of a bedstead which, using his own ideas in combination with Stark's, would enable them to build folding bedsteads, and to avoid any infringement upon Mr. Everitt's patent, and thus get rid of him.

The plans of the plaintiffs-in error were materially forwarded by the sudden appearance of Mr. Stark at their counting-house in Philadelphia, in February, 1878. They concealed his presence in Philadelphia from Everitt until after they had bought Stark's patent for $1000. The purchase was made on the 23d of February, 1878, on which day Mr. Stark gave them an assignment in writing, and they gave him $200 in cash, and their due bill for $800 for the balance. "The Master finds as a fact, that the defendants below bought the Stark patent, not for the purpose of protecting the Everitt patent against a possible suit for infringement, but for the purpose of so using the Stark patent as to defeat the plaintiff's claim for royalty." (Master's report, record herewith, p. 47). Having secured Stark's patent, Hale *et al.* then informed Everitt that Stark had been in Philadelphia, and had threatened to sue them for

infringement of his rights. They further told him that they thought the best plan would be to settle with Stark; that they would be obliged to pay royalties to Stark now, and that under no circumstances would they be willing to pay royalties to two inventors. They said they were perfectly willing to continue paying seven per cent. for the manufacture of the bedsteads, but no more. They said that they had been negotiating with Stark or his agent on the subject, and they thought they could persuade Stark to be satisfied with five per cent, if Everitt would reduce his amount of royalty to two. This was a nice little scheme, and if successful, would have resulted in a saving to plaintiffs in-error of more than $1700 a year as the result of an invested capital of $1000. Their simulated alarm at the appearance of Mr. Stark was not easily communicated to Mr. Everitt. He had a lively recollection of the care with which eminent counsel had examined his patent in the first instance, and so was not frightened at the appearance of Mr. Stark, and refused to accede to their offers. The whole story of this fraud is told in the Master's report (record herewith, pp. 46 *et seq.*)

They then conceived another fraudulent scheme. They ordered the assignment which Mr. Stark had made to them on the 23d of February, 1878, not to be put upon record, but that Mr. Stark's patent, with such modifications as would take as much of Everitt's invention away from him as the skill of their counsel could devise, should be re-issued to Stark, as if he were still the owner. They then instructed their counsel in Washington, Mr. Rodney Mason, to write letters to them, as if he was Stark's attorney, containing threats of litigation if they did not either cease their unlawful infringement of Stark's patent, or agree to pay him a royalty. Their counsel in Washington, obedient to the orders of the plaintiffs-in-error written to him from Philadelphia, sent sham letters as requested, which were duly shown to Mr. Everitt, accompanied by

expressions of terror from the defendants, who affected to look upon Mr. Stark and his threatened lawsuit as the means of certain ruin to Mr. Everitt and themselves. Even this did not shake his determination and his belief in the validity of his patent.

They then arranged a meeting between their counsel, Mr. Rodney Mason, and Mr. Everitt, at which Mr. Mason was to represent the character of Mr. Stark's stern and threatening agent, while they took the role of the terrified infringers. This meeting was held and the play was played all through for the sole benefit of Mr. Everitt and to produce an effect upon his mind. It also was unsuccessful.

The next scheme seems to have been suggested by Mr. Henry S. Hale, which was that Mr. Rodney Mason, the Washington counsel of the defendants, should actually institute a suit in the Circuit Court of the United States, in Philadelphia, in the name of Mr. Stark as plaintiff, for an injunction and account against the plaintiffs in error, as infringers of Mr Stark's patent The sham suit was commenced. The bill was filed and served upon the plaintiffs in error, and shown to Mr. Everitt and his counsel for the purpose of inducing him finally to consent to reduce his royalty in order to settle with Mr. Stark. Even this did not succeed in inducing Mr. Everitt to give up his rights. In the meantime the plaintiffs in error had ceased to pay Mr. Everitt his royalty monthly and to render him the accounts which they were bound to do under their contract. A period of sixty days after demand elapsed, and the default stipulated for in the contract became complete.

The *exceptions* filed to the Master's report by the plaintiffs-in-error, were some 43 in number, and not one of them made or mooted any Federal question as arising upon his report.

(See the exceptions, record herewith, pp. 73 *et seq.*; also Master's Supplemental Report on exceptions, record, p. 80.)

The Court of Common Pleas dismissed the exceptions, and on April 22, 1882, entered a final decree, in accordance with the Master's report, to the following effect:

1. That upon the account, as stated, of defendants' sales under plaintiff's patent and the contract of April 16, 1874, defendants are indebted to plaintiff in the sum of $6554.58 with interest from December 10, 1878, which they are ordered to pay herewith.

2. That defendants forthwith assign and deliver to plaintiff the Letters Patent for an improvement in folding-bedsteads, numbered 148,940, dated March 24, 1874.

3. That they forthwith assign and deliver to plaintiff the following Letters Patent: number 159,908, granted February 16, 1875, to H. W. Curtis; number 181,450, granted August 22, 1876, to C. Kilburn; number 182,465, granted September 19, 1876, to S. D. Newcomb; and number 210,777, granted December 10, 1878, to Henry S. Hale.

4. That they forthwith assign and deliver to the plaintiff the reissued patent, number 8161, and granted April 9, 1878, to Andrew Stark.

(See decree of Court of Common Pleas, record herewith, page 91.)

The decree, as will be observed, directs the defendants to assign to the plaintiff his own original patent of the 24th of March, 1874; four patents which have been granted to the parties to the transaction for improvements upon the plaintiff's bedstead; and the old patent of Andrew Stark, fraudulently bought by the defendants, and reissued on the 9th of April, 1878.

With regard to these it is sufficient to say that the defendants themselves admitted the plaintiff's right to a reassignment of his own patent, and, therefore, no question can be made as to it. The four patents for improvements are mentioned in the Master's report (record herewith, pp. 62). He finds that each one of these four was for an improvement in wardrobe bedsteads, and that three of them

specifically refer to the plaintiff's patent by name, and were for improvements upon it.

These four patents were granted to H. W. Curtis, Cheney Kilburn, S. D. Newcomb, and Henry S. Hale, and the title to them is in plaintiffs-in-error. Three of these patentees were parties to the original agreement of the 16th of April, 1874, and signed the same; and it was shown in the testimony that S. D. Newcomb was a partner with the defendants, interested in their business, and was the superintendent of their manufactory.

The title of the defendants to the Stark patent was the subject of full consideration, both in the testimony, in the Master's report, and in the argument upon exceptions before the Court.

The Opinion of the Court of Common Pleas, delivered by Judge Thayer, shows that the only questions in the case were questions of general equity jurisprudence as to the liability of the plaintiffs-in-error to account under their contract with the defendant-in-error, and the effect of the bad faith in their dealings with the defendant-in-error, and that no questions of Federal law were decided or discussed by the Court of Common Pleas, or entered into the determination of the cause by that Court (see Opinion of Judge Thayer, record herewith, p. 87).

From the decree of the Court of Common Pleas the plaintiffs-in-error appealed to the Supreme Court of the State.

Their *assignments of error*, upon that appeal, are found in the record herewith submitted (page 92), and no Federal question is stated therein as having been decided or involved in the decision of the cause by the Court of Common Pleas, or necessary to the decision of the cause by the Supreme Court of the State.

The Supreme Court of Pennsylvania, upon the assignments of error, on January 29, 1883, rendered the following opinion and judgment:

"*Per Curiam.*

"Notwithstanding the full and able argument of counsel for the appellants, we are unable to discover any error in this decree. The evidences of fraud on the part of the company are so manifest as to fully vindicate the conclusion of the Court and to justify the decree.

"Decree affirmed and appeal dismissed at the costs of the appellants."

Certainly the thought never entered the mind of the Supreme Court of Pennsylvania that any Federal question was decided by this judgment.

A petition was filed by the plaintiffs-in-error for a reargument, but no Federal question was stated in that petition (see petition, record herewith, p. 95).

After the return of the record to the Court of Common Pleas, a writ of *fieri facias* was issued against plaintiffs-in-error on the decree of that Court affirmed by the Supreme Court, and thereupon the present writ of error was applied for.

The writ was allowed February 7, 1883.

The petition of the parties for the allowance of the writ is printed in the record herewith submitted (page 96).

ARGUMENT FOR DEFENDANT-IN-ERROR ON THE MOTION TO DISMISS.

First.

The rule laid down by this Court on the subject of its jurisdiction in such cases, is so well settled, that it seems to be a work of supererogation to cite authorities; but some of the more recent cases may be mentioned.

In *Dugger* vs. *Bocock* (104 U. S. Reports, p. 596), a writ was dismissed for want of jurisdiction, the Chief Justice saying, "The burden is on the appellants to show our juris-"diction, and we cannot entertain the case unless they "have done so."

In *Broughton* vs. *Exchange Bank* (104 U. S. Reports, 427), the writ was dismissed for want of jurisdiction, because no Federal question affirmatively appeared upon the record, and the opinion of the State Court showed that their judgment was upon a ground not involving any Federal question.

In *Brown* vs. *Colorado* (106 U. S., 95,) the Chief Justice gave a more elaborate expression of the opinion of the Court on this subject. He said:—

"If the judgments of the Courts of the States are to be "reviewed here for decisions upon such questions, it should "be only when it appears unmistakably that the Court "either knew, or ought to have known, that such a ques-"tion was involved in the decision to be made" (p. 97).

And he quotes Mr .Justice Miller, in *Bridge* vs. *Hoboken* (1 Wall, 116, 143), thus: "The Court must be able to see "clearly, from the whole record, that a certain provision of "the Constitution or Act of Congress was relied on by the "party who brings the writ of error, and that the right thus "claimed by him was denied."

And also quotes Mr. Justice Story, in *Crowell* vs. *Randall* (10 Pet., 368, 398), where he said that it was "not sufficient "to show that a question might have arisen or been appli- "cable to the case, unless it was further shown on the "record that it did arise, and was applied by the State "Court to the case."

In *Bolling* vs. *Lesuer* (91 U. S., 575) the Chief Justice said: "We cannot re examine the judgment or decree of a State Court simply because a Federal question was presented to that Court for determination. To give us jurisdiction, it must appear that such a question was *in fact decided*, or that its decision was *necessarily* involved in the judgment or decree as rendered."

In *Citizens' Bank* vs. *Board of Liquidation* (98 U. S., 141) it was said: "To give us jurisdiction, under sec. 709, Rev. Stats., it is not only necessary that some one of the questions mentioned in the section *should exist on the record*, but that the decision was *controlling in the disposition of the* cause" (*Williams* vs. *Oliver*, 12 How., 125; *Klinger* vs. *Missouri*, 13 Wall, 257).

SECOND.

It is respectfully submitted that no Federal question can be shown to have been involved in the decision in this case; and none was decided.

It is certainly very difficult for us to anticipate in advance what point our adversaries will rely upon to sustain the jurisdiction; but, at the risk of aiding them in their search for such a question, we must look for it in the whole record.

In the petition of Hale *et al.*, to the Chief Justice of Pennsylvania, for the allowance of the writ of error (record herewith, p. 96), they set forth that "the right, title, privilege and "immunity claimed by them" were claimed under the Constitution of the United States, article I, sec. 8, in relation to inventions, and article III, sec. 2, as to the judicial power

of the United States, and under the Statute Laws of the United States referring to those subjects-matter. To what right, title, privilege and immunity do they refer? We presume it is to the claim of Hale *et al.*, stated in the prior part of their petition as having been "averred in their "answer, that they were not liable as charged." Looking further back into the petition to see what liability had been charged, we find it stated under three heads: (I) that they were liable to assign to Everitt certain patents, (II) that they were liable to account for certain royalties, and also (III) to an injunction.

To consider these three heads in their order is really to scan the whole record, for there is nothing whatever in the case from beginning to end which is not included under one or other of them. It is odd, to say the least, that where every point in controversy in the case was, as is now averred, out of the jurisdiction of the State Courts, the learned counsel for plaintiffs in-error should have waited during the tedious litigation of more than four years, and until their clients had met with overwhelming and complete defeat, to discover or to suggest such a fatal objection.

I. *As to the "right, title, privilege and immunity" claimed by plaintiffs in-error, to be free from the obligation to assign to Everitt certain patents.*

The decree directs Hale *et al.* to assign to Everitt the following patents:

1. No. 148,940, the Everitt Patent.
2. No. 159,908, issued to H. W. Curtis.
3. No. 181,450, issued to Cheney Kilburn.
4. No. 182,465, issued to S. D. Newcomb.
5. No. 210,777, issued to Henry S. Hale.
6. No. 8,161, reissued to Andrew Stark.

The first named is the original patent of the defendant-in-error, and about its reassignment to him there is no dispute.

2, 3 and 5 were issued to H. W. Curtis, Cheney Kilburn and Henry S. Hale respectively. They were parties to the original agreement, on which the suit is founded (record herewith, p. 2). 4 was issued to S. D. Newcomb, who was also a partner with the plaintiffs-in-error in the manufacturing of furniture under these patents, and was the superintendent of their factory when they merged into a corporation. The decree for the assignment of these patents was prayed for and made upon the ground that it was Everitt's right *under the agreement* to have them. No claim was made on any other ground. The clause in the agreement touching this point reads as follows:

"*Seventh.*—It is further understood and agreed that any "improvements in said patented bedsteads which may be "made by either of the parties hereto, and any Letters "Patent of the United States obtained for such improve- "ments, shall be held and enjoyed by said parties of the "second part, under and subject to the terms of this "agreement."

The agreement provided for a forfeiture of the rights of Hale *et al.* in the Letters Patent, and a reassignment of the same to Everitt, upon default in paying royalty on the manufactured goods. The default occurred, and Hale *et al.* by their answer (record herewith, p. 11) admitted the default and the consequent forfeiture. The Master found as a fact that these four patents (2, 3, 4 and 5) came within the terms of the agreement, and that, *under that contract*, the defendant-in-error was entitled to demand and receive an assignment of them (record herewith, pp. 61 *et seq.*).

They were claimed in the bill under the contract as "improvements to said patented process." The answer admitted (record herewith, p. 11) that they were for "im- "provements in the said bedsteads," and that "they "(respondents) understood the plaintiff to claim and "demand an assignment to him of the patents for such "improvements *as a right belonging to him under the said* "*agreement.*"

The whole controversy found in the pleadings was upon the construction and effect of the *agreement*; and the Master, having adopted the construction contended for by the bill, directs the assignment to be made. In three of these patents the specifications denominate them as improvements on Everitt's patent by name, and the other is so clearly such that, although the Everitt patent is not mentioned, there is no room for doubt. (See Master's Report, record herewith, p. 62.)

If it be said that, as to this last mentioned patent, it was necessary for the Master, in order to arrive at the conclusion, which he reached, to enter into the construction of the patent, we reply, that, if this be so (which we deny), it was merely an incidental or collateral question, which is not sufficient to oust the jurisdiction of the State Court, as was expressly held by this Court in

Hartell vs. *Tilghman*, 99 U. S., 547.

Albright vs. *Teas*, 106 *id.*, 618.

Mr. Justice Woods, in the last-named case, said: "This incidental and collateral inquiry does not change the nature of the litigation. It arises solely on the contract, and not upon the patent laws of the United States."

As to 6, the reissued patent to Andrew Stark, the case is equally clear.

The averments upon which defendant-in error founded his claim to have this patent assigned to him are found in paragraph VIII of the bill (record herewith, p. 7) and in the amendment to the bill (record herewith, p. 14), and they amount to a charge of fraud committed by Hale *et al.* in the secret purchase of the patent and the subsequent use of it to deprive Mr. Everitt of his rights under the agreement.

The *seventh* paragraph of the answer contains the defense made to the charge of fraud. The claim for the assignment of this patent was based upon the equitable doctrine

stated by the Master in his report (record herewith, pp. 66 *et seq.*), to wit: That from the time of the execution of the original agreement the parties occupied to each other a relation of confidence, and thenceforth it could not be permitted that either party should acquire any rights prejudicial to the other parties' interest in the subject of the contract. The Master found on this subject that the answer of the defendants in relation to the purchase of Stark's patent, and their testimony given before the Examiner in support of their answer, were untrue, and continued as follows: "The falsity of the defendants' answer as to the assignment of the Stark patent; the conflict between their testimony and that of the plaintiff and Mr. Stevens; the contradiction of their testimony on other points by their own letters; and the conspiracy with Mr. Mason and Mr. Stevens, forbid the Master to credit their testimony as to their purchase of the Stark patent in good faith and after notice to the plaintiff. If the Master were otherwise in doubt, as he is not, the admissions of the defendant, H. S. Hale, and of Mr. Mason with regard to the want of practical value in the Stark patent in its original form and the purpose of the defendants to buy it and to reissue it so as to cover the Everitt patent, would convince him that the defendants could not have offered the plaintiff the opportunity of participating in that purchase. The Master therefore finds that the defendants' negotiations with Stark were concealed from the plaintiff; that he was not offered an opportunity to participate in the purchase of the Stark patent, and that the defendants secretly purchased that patent in their own right for the purpose of using it as a means of compelling the plaintiff either to abandon his patent or to so modify his contract with them as to let them manufacture under his patent for a diminished royalty; that this action of the defendants was an actual fraud upon the plaintiff is too clear for argument."

It is impossible to see any Federal question here. The

averments *pro* and *con* and the decision of the question as to this reissued patent, were all based upon the *equitable doctrine arising from fraud.* The opinion delivered by the Court of Common Pleas on final hearing, and the opinion of the Supreme Court of Penna. in deciding the appeal, all base the relief given upon the same *fraud*, and no mention of any Federal question was made on the subject of the assignment of Stark's patent by the defendant-in-error, the Master, or either of the Courts. As stated by the Master in his supplementary report (record herewith, p. 82), the Stark patent was reissued as part of a fraudulent scheme in order to cover the Everitt patent and to constitute it an infringement of the Stark patent reissued, and that whether or not that purpose be accomplished is immaterial in the case; and he expressly refused to decide the question of infringement as not being within the jurisdiction of the State Court (record herewith, pp. 82, 83), and as not being material to any question at issue.

In respect to Stark's patent acquired fraudulently, as it was, and the subsequent improvements for which Letters Patent were taken out, we submit that they, together with the original patent of the appellee, formed a unit under the terms of the agreement. It is evident under the testimony that any one who owned only the plaintiff's patent, could not make and sell bedsteads such as were made by the defendants under this agreement at the time the bill was filed. If each of the six patents were held by a different owner, the consent of each owner would be required for the manufacture of a bedstead which would combine or include them all. It was evidently the purpose of the agreement that all the patents which came into the possession of any one of the parties to the agreement, should form a common stock, and go or remain together. It would have been a mockery of justice to allow the appellants to assign to the appellee his original patent and withhold the Stark patent and the subsequent improvements or any of them. No sooner

would he have begun to reap profits from his own patent by manufacturing and selling the same than he would be confronted by five several lawsuits, each of them based upon one of the five patents which the appellants endeavored to withhold. To make his success in this suit of any value to him, the appellee must have them all. He must have them when he begins to manufacture bedsteads, with the same safety and the same freedom to use those inventions which the appellants had when the bill was filed, and the only way to effectually give it to him is to assign the patents to him.

II. *As to the "right, title, privilege and immunity" claimed by the plaintiffs-in-error to be free from the liability to account for royalties.*

This liability depended entirely upon the contract. Hale *et al.* had agreed to pay a certain percentage on the wholesale price of the manufactured goods as a royalty to the inventor; neither in the pleadings, nor in the report of the Master, nor in the opinions of the Courts, is there any indication of a Federal question arising upon this account, not even to the extent of requiring the Master to decide whether the goods were or were not manufactured under the patent, as was the case in *Hartell* vs. *Tilghman* and *Albright* vs. *Teas.*

III. *As to the "right, title, privilege and immunity" claimed by the plaintiffs-in-error to be free from the injunction.*

The Court will observe that no injunction is contained in the final decree (record herewith, p. 91), and that as to the injunction contained in the interlocutory decree (record herewith, p. 15), the plaintiffs-in-error, in the *ninth* paragraph of their answer, consented that a decree should be entered in favor of the defendant-in-error as to all the prayers of his bill, except that part of the second prayer which requires the assignment of the improvements. The prayer for an injunc-

tion was the third prayer of the bill (record herewith, p. 9), and was within the confession of the judgment thus made by the plaintiffs-in-error.

It is manifest that there is no Federal question involved in any manner in this case; and clearly the decision of such a question by the Court was not necessary for its complete determination.

THIRD.

Counsel for the defendant-in-error beg the pardon of the Court in advance for offering a further suggestion, which perhaps, may not fairly be considered as adding to the weight of their argument from a legal point of view, but it is of vital importance to their client; that this case ought, if possible, to be brought to a more speedy conclusion than is probable should it wait to be argued upon the regular call of the docket. The bill was filed in 1878, more than five years ago. Meanwhile, Stark's patent, which was originally granted August 27, 1865, has lived its life and expired; and one-third of the life of the other patents has passed since, according to the judgment of the Supreme Court of Pennsylvania, the plaintiff was entitled to have them assigned to him and to reap whatever profit could have been realized from their use.

J. HUBLEY ASHTON,
E. COPPEE MITCHELL,
Of Counsel for Defendant-in-error.

122-627

IN THE

SUPREME COURT

OF THE UNITED STATES.

October Term, 1883. No. 951.

HENRY S. HALE, *et al.*, AND THE HALE & KILBURN MANUFACTURING COMPANY,
Plaintiffs-in-Error,

vs.

ELISHA E. EVERITT,
Defendant-in-Error.

Appendix, containing additional Extracts from the record and copies of the various Patents referred to in the above case.

J. HUBLEY ASHTON,
E. COPPÉE MITCHELL,
Of Counsel for Defendant-in-Error.

CONTENTS.

	PAGE
Allowance of Writ of Error,	1
Copy of portion of Master's Account,	1
Recapitulation of Master's Account,	14
Everitt Patent,	16
Curtis Patent,	19
Kilburn Patent,	22
Newcomb Patent,	25
Stark Patent and Reissue,	27
Henry S. Hale Patent,	32

ALLOWANCE OF WRIT OF ERROR BY THE CHIEF JUSTICE OF PENNSYLVANIA.

And now, to wit, February 7, 1883, citation awarded, and writ of error allowed by me.

ULYSSES MERCUR,
Chief Justice of Pennsylvania.

Filed February 7, 1883.

WM. VON A. WILLIAMSON,
Clerk U. S. C. C.

COPY OF PORTION OF MASTER'S ACCOUNT.

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
1,887,	Sept. 2,	F. O. C., 612,	Toby Co.,	$114 00
1,888,	" 4,	" 614,	Mason,	155 00
1,889,	" 7,	" 616,	Toby Co.,	35 00
1,890,	" 9,	" 617,	Wooster,	190 00
1,891,	" 10,	" "	Toby Co.,	79 00
1,892,	" 12,	" 619,	R. & D. R. R.,	64 00
1,893,	" 18,	" 622,	Toby Co.,	64 00
1,894,	" "	" "	" "	119 00
1,895,	" "	" "	" "	48 00
1,896,	" "	" "	" "	79 00
1,897,	" 20,	" 624,	Bush,	64 00
1,898,	" 27,	" 627,	Bouncer,	164 00
1,899,	" 11,	S. A. 2, 931,	Engel,	35 00
1,900,	" "	" 936,	Wilson,	85 00
1,901,	" 8,	" 943,	Stelwagen,	38 00
1,902,	" 20,	" 948,	Van Culen,	95 00
1,903,	" "	" "	Cantlin,	20 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
1,904,	Sept. 27,	S. A. 2,	967, Bache,	115 00
1,905,	" 28,	"	970, McGill,	69 00
1,906,	" 10,	C. O. D.,	82, Barlow,	42 50
1,907,	" 4,	C. O. E.,	36, Peterson,	35 00
1,908,	" 9,	"	41, Diston,	40 00
1,909,	" 10,	"	43, Hanmore,	32 00
1,910,	" 12,	"	47, Price,	120 00
1,911,	" 30,	"	65, Abrisquesta,	125 00
[*Page 92.]				
1,912,	Sept. 1,	Exhibit 10,	255, New York Store,	60 00
1,913,	" "	"	"	48 50
1,914,	" "	"	"	31 00
1,915,	" "	"	"	175 00
1,916,	" "	"	"	60 00
1,917,	" "	"	"	64 00
1,918,	" "	"	"	35 00
1,919,	" "	"	"	55 00
1,920,	" "	"	"	85 00
1,921,	" "	"	"	85 00
1,922,	" "	"	"	140 00
1,923,	" "	"	"	30 00
1,924,	" "	"	"	39 60
1,925,	" "	"	"	55 00
1,926,	" "	"	"	70 00
1,927,	" "	"	"	92 00
1,928,	" "	"	"	63 00
1,929,	" "	"	"	140 00
1,930,	" "	"	"	75 00
1,931,	" "	"	"	39 00
1,932,	" "	"	"	140 00
1,933,	" "	"	"	115 00
1,934,	" "	"	"	35 00
1,935,	" "	"	"	35 00
1,936,	" "	"	"	95 00
[*Page 93.]				

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
1,937,	Sept. 1,	Exhibit 10, 255,	New York Store,	38 00
1,938,	" "	"	"	70 00
1,939,	" "	"	"	54 00
1,940,	" "	"	"	140 00
1,941,	" "	"	"	30 00
1,942,	" "	"	"	112 00
1,943,	" "	"	"	56 50
1,944,	" "	"	"	55 00
1,945,	" "	"	"	35 00
1,946,	" "	"	"	120 00
1,947,	" "	"	"	150 00
1,948,	" "	"	"	114 00
1,949,	" "	"	"	64 00
1,950,	" "	"	"	126 00
1,951,	" "	"	"	98 60
1,952,	" "	"	"	85 00
1,953,	" "	"	"	35 00
1,954,	" "	"	"	30 00
1,955,	" "	Exhibit 10, 256,	Baltimore Store,	126 00
1,956,	" "	"	"	30 00
1,957,	" "	"	"	35 00
1,958,	" "	"	Boston Store,	64 00
1,959,	" "	"	"	64 00
1,960,	" "	"	"	70 00
1,961,	" "	"	"	64 00
1,962,	" "	"	"	150 00
[*Page 94.]	Total for September, 1878, . .			$5,904 70
1,963,	Oct. 1,	F. O. C.,	629, Richard,	$35 00
1,964,	" 3,	"	631, Wooster,	75 00
1,965,	" "	"	" "	64 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
1,966,	Oct. 4,	F. O. C., 632,	Toby Co.,	119 00
1,967,	" "	" "	"	64 00
1,968,	" "	" "	" Kinkade,	79 00
1,969,	" 11,	" 637,	Toby Co.,	35 00
1,970,	" 12,	" 639,	"	79 00
1,971,	" 16,	F. O. F., 2,	Gibson,	89 00
1,972,	" 18,	" 3,	Towells,	44 00
1,973,	" "	" "	"	54 00
1,974,	" "	" "	"	69 00
1,975,	" "	" 5,	Hayden,	179 00
1,976,	" 7,	C. O. D., 102,	Smith,	129 00
1,977,	" 1,	C. O. E., 67,	Phillips,	34 00
1,978,	" "	" 68,	Hentz,	64 00
1,979,	" 2,	" "	McEvoy,	42 00
1,980,	" 5,	" 71,	Baldwin,	189 00
1,981,	" 8,	" 73,	Bliss,	73 00
1,982,	" "	" 77,	McCurdy,	64 00
1,983,	" 12,	" 78,	Alleman,	50 00
1,984,	" 14,	" 79,	Hanmore,	79 00
1,985,	" 22,	" 86,	Elliott,	190 00
1,986,	" 26,	" 91,	Downing,	75 00
1,987,	" "	F. O. F., 12,	Hayes,	57 00
1,988,	" 29,	" "	Jones,	75 00
1,989,	" 17,	S. A., 999,	Williams,	45 00
[*Page 95.]				
1,990,	Oct. 5,	Exhibit 10, 257,	New York Store,	74 00
1,991,	" "	"	"	175 00
1,992,	" "	"	"	63 00
1,993,	" "	"	"	116 08
1,994,	" "	"	"	100 00
1,995,	" "	"	"	44 00
1,996,	" "	"	"	150 00
1,997,	" "	"	"	105 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
1,998,	Oct. 5,	Exhibit 10, 257,	New York Store,	$74 00
1,999,	" "	"	"	64 00
2,000,	" "	"	"	35 00
2,001,	" "	"	"	104 00
2,002,	" "	"	"	55 00
2,003,	" "	"	"	70 00
2,004,	" "	"	"	35 00
2,005,	" "	"	"	80 00
2,006,	" "	"	"	35 00
2,007,	" "	"	"	105 00
2,008,	" "	"	"	125 00
2,009,	" "	"	"	125 00
2,010,	" "	"	"	31 00
2,011,	" "	"	"	95 00
2,012,	" "	"	"	95 00
2,013,	" "	"	"	70 00
2,014,	" "	"	"	74 00
[*Page 96.]				
2,015,	Oct. 5,	Exhibit 10, 257,	New York Store,	67 55
2,016,	" "	"	"	74 00
2,017,	" "	"	"	110 00
2,018,	" "	"	"	35 00
2,019,	" "	"	"	35 00
2,020,	" "	"	"	55 00
2,021,	" "	"	"	75 00
2,022,	" "	"	"	42 50
2,023,	" "	"	"	104 60
2,024,	" "	"	"	44 00
2,025,	" "	"	"	74 00
2,026,	" "	"	"	115 00
2,027,	" "	"	"	165 00
2,028,	" "	"	"	60 00
2,029,	" "	"	"	35 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
2,030,	Oct. 5,	Exhibit 10, 257,	New York Store,	$ 45 00
2,031,	" "	"	"	55 00
2,032,	" "	"	"	55 00
2,033,	" "	"	"	185 00
2,034,	" "	"	"	45 00
2,035,	" "	"	"	174 00
2,036,	" "	"	"	56 40
2,037,	" "	"	"	50 00
2,038,	" "	"	"	55 00
2,039,	" "	"	"	79 00
[*Page 97.]				
2,040,	Oct. 4,	Exhibit 10, 257,	New York Store,	180 00
2,041,	" "	" "	"	180 00
2,042,	" "	" "	"	35 00
2,043,	" "	" "	"	178 29
2,044,	" "	" "	"	55 00
2,045,	" "	" "	"	58 00
2,046,	" "	" "	"	79 00
2,047,	" "	" "	"	48 40
2,048,	" "	" "	"	48 40
2,049,	" "	" "	"	75 00
2,050,	" "	" "	"	70 00
2,051,	" "	" "	"	121 50
2,052,	" "	" "	"	115 43
2,053,	" "	" "	"	75 00
2,054,	" "	" "	"	75 00
2,055,	" "	" "	"	100 00
2,056,	" "	" "	"	63 00
2,057,	" "	" "	"	58 00
2,058,	" "	" "	"	143 00
2,059,	" "	" "	Boston Store,	55 00
2,060,	" "	" "	"	79 00
2,061,	" "	" "	"	50 00
2,062,	" "	" "	"	53 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
2,063,	Oct. 4,	Exhibit 10, 259,	Boston Store,	$40 00
2,064,	" "	" "	"	92 50
[* Page 98.]				
2,065,	Oct. 5,	Exhibit 10, 259,	Boston Store,	64 00
2,066,	" "	" "	"	85 00
2,067,	" "	" "	"	70 00
2,068,	" "	" "	"	55 00
2,069,	" "	" "	"	150 00
2,070,	" "	" "	Baltimore Store,	70 00
2,071,	" "	" "	"	55 00
2,072,	" "	" "	"	105 00
2,073,	" "	" "	"	45 00
2,074,	" "	" "	"	45 00
2,075,	" "	"	260, Bache,	50 00
2,076,	" "	"	" Toby Co.,	70 00
[* Page 99.]		Total for October, 1878.		$9,132 65

2,077,	Nov. 1,	S. B. 1,	35, Metzler,	$ 60 00
2,078,	" 6,	"	39, Franck,	33 00
2,079,	" 27,	"	59, Martin,	119 00
2,080,	" "	"	61, Jenks,	80 00
2,081,	" 23,	S. B. 2,	64, Cornell,	127 00
2,082,	" 1,	S. B.,	20, Toby Co.,	58 00
2,083,	" "	"	" "	64 00
2,084,	" 2,	"	22, "	79 00
2,085,	" 12,	"	34½, "	79 00
2,086.	" 14,	"	39, "	158 00
2,087,	" 17,	"	47, Da Costa,	210 00
2,088,	" 27,	"	57, Toby Co.,	44 00
2,089,	" 10,	C. O. E.,	97, Barton,	95 00
2,090,	" 26,	"	117, Fleming,	140 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
2,091,	Nov. 7,	F. O. F.,	18, James,	$ 34 00
2,092,	" 22,	"	27, Toby Co.,	85 00
2,093,	" 23,	"	" Fenner,	70 00
2,094,	" "	"	" "	35 00
2,095,	" "	"	" "	124 00
2,096,	" 29,	"	31, Wooster,	59 00
2,097,	" "	"	" "	84 00
2,098,	"	Pbgh. Return,	Edmundson,	44 00
2,099,	" 9,	Exhibit 10, 260,	New York Store,	100 00
2,100,	" "	"	"	93 00
2,101,	" "	"	"	85 00
[* Page 100.]				
2,102,	Nov. 9,	Exhibit 10, 260,	New York Store,	135 00
2,103,	" "	"	"	43 61
2,104,	" "	"	"	80 00
2,105,	" "	"	"	79 51
2,106,	" "	"	"	64 00
2,107,	" "	"	"	120 00
2,108,	" "	"	"	35 00
2,109,	" "	"	"	85 00
2,110,	" "	"	"	98 33
2,111,	" "	"	"	75 00
2,112,	" "	"	"	190 00
2,113,	" "	"	"	150 00
2,114,	" "	"	"	50 00
2,115,	" "	"	"	117 56
2,116,	" "	"	"	70 00
2,117,	" "	"	"	57 00
2,118,	" "	"	"	24 33
2,119,	" "	"	"	35 00
2,120,	" "	"	"	35 50
2,121,	" "	"	"	35 00
2,122,	" "	"	"	59 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
2,123,	Nov. 9,	Exhibit 10, 260,	New York Store.	$85 00
2,124,	" "	"	261, Boston Store,	62 00
2,125,	" "	"	" "	58 00
2,126,	" "	"	" "	54 00
[* Page 101.]				
2,127,	Nov. 9,	Exhibit 10,	261, Boston Store,	49 50
2,128,	" "	"	" "	30 00
2,129,	" "	"	" "	30 00
2,130,	" "	"	" "	115 00
2,131,	" "	"	" "	104 00
2,132,	" "	"	" "	124 00
2,132,	" "	"	Baltimore Store,	96 00
2,133,	" "	"	" "	52 67
2,134,	" "	"	" "	22 67
2,135,	" "	"	" "	40 00
2,136,	" "	"	" "	72 67
2,137,	" "	"	" "	29 33
2,138,	" 8,	"	262, Franck,	33 00
2,139,	" 13,	"	" Elliott,	135 00
2,140,	" 19,	"	" Hoag,	42 00
2,141,	" 26,	"	" Peadody House,	29 70
2,142,	" 9,	"	" James,	37 00
[* Page 102.]		Total for November, 1878,		$5,099 38
2,143,	Dec. 14,	S. B. 2	83, Lowrey,	$ 35 00
2,144,	" 26,	"	103, Tatnall,	31 50
2,145,	" 2,	S. B,	61, Toby Co.,	58 00
2,146,	" 7,	"	67, "	190 00
2,147,	" 10,	"	76, Hayden,	44 00
2,148,	" "	"	" "	54 00
2,149,	" "	"	" "	79 00
2,150,	" "	"	" "	79 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
2,151,	Dec. 10,	S. B.,	76, Toby Co.,	$ 58 00
2,152,	" "	"	" "	48 00
2,153,	" "	"	" "	79 00
2,154,	" "	"	74, Newark Co.,	105 00
2,155,	" 17,	"	77½, Toby Co.,	104 00
2,156,	" "	"	77, Haywood & Co.,	50 00
2,157,	" 21,	"	83, Toby Co.,	64 00
2,158,	" 27,	F. S. B.,	90, "	79 00
2,159,	" 13,	C. O. E,	132, Wilson,	40 00
2,160,	" 26,	"	158, Robinson,	38 00
2,161,	" 19,	F. O. F.,	45, Rorrason,	55 00
2,162,	" 21,	"	47, Rambo,	30 00
2,163,	" 7,	Exhibit 10,	262, New York Store,	104 00
2,164,	" "	"	"	37 50
2,165,	" "	"	"	235 00
2,166,	" "	"	"	32 50
2,167,	" "	"	"	35 00
[*Page 102.]				
2,168,	Dec. 7,	Exhibit 10,	262, New York Store,	44 41
2,169,	" "	"	" "	49 00
2,170,	" "	"	" "	54 00
2,171,	" "	"	" "	89 00
2,172,	" "	"	" "	80 00
2,173,	" "	"	" "	27 00
2,174,	" "	"	" "	150 00
2,175,	" "	"	" "	58 00
2,176,	" "	"	" "	71 14
2,177,	" "	"	" "	150 00
2,178,	" "	"	" "	72 20
2,179,	" "	"	" "	59 15
2,180,	" "	"	" "	40 00
			"	40 00
2,181,	" "	"	" "	27 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
2,182,	Dec. 7,	Exhibit 10, 262,	New York Store,	$74 00
2,183,	" "	"	" "	29 00
2,184,	" "	"	" "	79 00
2,185,	" "	"	" "	85 00
2,186,	" "	"	" "	77 25
2,187,	" "	"	" "	120 00
2,188,	" "	"	" "	34 00
2,189,	" "	"	263, Baltimore Store,	71 00
2,190,	" "	"	" "	20 00
2,191,	" "	"	" Boston Stors,	130 00
2,192,	" "	"	" "	235 00
[*Page 104.]				
2,193,	Dec. 7,	Exhibit 10,	263, Boston Store,	58 00
2,194,	"	"	"	79 00
2,195,	"	"	"	100 00
2,196,	"	"	"	64 00
2,197,	"	"	"	93 00
2,198,	"	"	"	35 00
2,199,	" 4,	P. C.,	Fleming,	140 00
2,200,	" 26,	"	Schultz,	45 00
[*Page 105.]	Total for December, 1878, . .			$1,343 65
	1879.			
2,201,	Jany. 3,	S. B. 1,	103, Harding,	$110 00
2,202,	" 10,	"	109, Weamer,	42 00
2,203,	" 7,	S. B. 2,	115, Annie Winters,	170 00
2,204,	" 14,	"	121, Weamer,	15 00
2,205,	" 18,	"	126, Kohn,	36 90
2,206,	" 24,	"	133, Wood,	90 00
2,207,	" 28,	"	133½, Mench,	75 00

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
2,208,	Jany. 16,	S. B.,	102, Bringhurst,	$145 00
2,209,	" 18,	"	103, Toby Co.,	35 00
2,210,	" "	"	" "	42 50
2,211,	" "	"	104, Fenn,	80 00
2,212,	" "	"	" Yungling,	70 00
2,213,	" 22,	C. O. F.,	65, Bancroft,	51 00
2,214,	" 31,	"	66, Findlay,	108 50
2,215,	" 4,	N. Y. Return,		39 60
2,216,	" "	"		41 00
2,217,	" "	"		34 00
2,218,	" 11,	Exhibit 10, 264,	New York Store,	46 84
2,219,	" "	"	"	177 80
2,220,	" "	"	"	149 00
2,221,	" "	"	"	38 00
2,222,	" "	"	"	75 00
2,223,	" "	"	"	65 00
2,224,	" "	"	"	39 00
2,225,	" "	"	"	95 00
[*Page 106]				
2,226,	Jany. 11,	Exhibit 10, 264,	New York Store,	165 00
2,227,	" "	"	"	95 00
2,228,	" "	"	"	31 50
2,229,	" "	"	"	55 00
2,230,	" 6,	"	Boston Store,	70 00
2,231,	" "	"	"	64 00
2,232,	" "	"	"	85 00
2,333,	" "	"	"	65 10
2,234,	" 18,	"	Balto. Store,	93 00
2,235,	" "	"	"	79 00
2,236,	" "	"	"	35 00
2,237,	" 23,	P. C.,	Orr,	66 00
2,238,	" 24,	"	Marks,	82 00
[*Page 107.]		Total for January, 1879,		$2,856 74

No.	*Date.*	*Reference.*	*Purchaser.*	*Amount.*
2,239,	Feby.	24, S. B. 1,	149, Heritage,	$ 40 00
2,240,	"	3, "	155, Patton,	42 00
2,241,	"	1, S. B. 2,	136, Kramer,	75 00
2,242,	"	1, "	" Johnson,	70 00
2,243,	"	15, "	149, Gilbert,	115 00
2,244,	Mch.	1, "	158, Franklin,	140 00
2,245,	"	6, S. B.,	121, Crozer,	90 00
2,246,	"	8, "	" Shapley,	55 00
2,247,	"	11, "	123, Toby Co.,	158 00
2,248,	"	15, "	128, "	64 00
2,249,	"	" "	" "	79 00
2,250,	"	" "	" "	85 00
2,251,	"	" "	" "	35 00
2,252,	"	20, "	133, Flinger,	58 00
2,253,	"	21, "	137, Toby Co.,	64 00
2,254,	"	3, "	145, "	79 00
2,255,	"	" "	" Edmundson,	105 00
2,256,	"	4, "	146, Toby Co.,	64 00
2,257,	"	6, "	147, "	69 00
2,258,	"	" "	" "	94 00
[*Page 108.]		Total for February, 1879,		$1,581 00

RECAPITULATION OF MASTER'S ACCOUNT.

DATE.	TOTAL SALES.	DISCOUNT 10 per ct.	ROYALTY 7 per ct.	INTEREST	DAYS.	TOTAL.
1874.	Harding fee,					
Sept. 15,	$ 162 50			$41 90	1,547	$204 40
" 30,	150 00	$ 135 00	$ 9 45	2 41	1,532	11 86
Oct. 31,	1,183 00	1,064 70	74 55	18 76	1,501	93 31
Nov. 30,	1,619 00	1,457 10	101 99	25 00	1,471	126 99
Dec. 31,	1,330 00	1,197 00	83 79	20 16	1,440	103 95
1875.						
Jan. 31,	1,590 00	1,431 00	100 17	23 48	1,409	123 65
Feb. 28,	1,450 00	1,305 00	91 35	20 94	1,381	112 29
Mar. 31,	2,845 50	2,560 95	179 26	29 88	1,350	209 14
Apr. 30,	3,386 50	3,047 85	213 35	48 52	1,320	261 87
May 31,	2,536 00	2,282 40	159 77	34 37	1,289	194 14
June 30,	1,877 01	1,689 31	118 35	24 76	1,259	143 11
July 31,	679 50	611 55	42 80	8 80	1,228	51 60
Aug. 31,	1,818 50	1,636 65	114 56	22 94	1,197	137 50
Sept. 30,	5,340 60	4,806 54	336 45	65 35	1,167	401 80
Oct. 31,	2,910 95	2,619 86	183 39	34 64	1,136	218 03
Nov. 30,	3,820 30	3,438 27	240 67	44 42	1,106	285 09
Dec. 14,	Royalty, 25 00			4 55	1,092	29 55
" 31,	4,466 50	4,019 85	281 38	50 34	1,075	331 72
1876.						
Jan. 31,	1,953 50	1,758 15	123 07	21 40	1,044	144 77
Feb. 28,	2,160 00	1,94[illegible] 00	136 08	23 00	1,015	159 08
Mar. 31,	4,265 67	3,85[illegible] 11	268 73	44 11	984	312 84
Apr. 30,	5,192 18	4,672 97	327 10	51 99	954	379 09
May 16,	Carpet, 65 80			10 12	938	75 92
" 31,	4,522 98	4,070 69	284 94	43 84	923	328 78
June 30,	4,146 00	3,731 40	261 19	38 84	893	300 03
July 31,	2,687 50	2,418 75	169 31	27 61	862	196 92
Aug. 31,	3,810 68	3,429 62	240 07	33 24	831	273 31
Sept. 30,	8,094 50	7,285 05	509 95	68 08	801	578 03
Oct. 31,	10,083 00	9,074 70	635 22	81 49	770	716 71
Nov. 30,	5,949 25	5,354 33	374 80	46 12	740	420 92
Dec. 31,	4,111 00	3,699 90	258 99	30 60	709	289 59
1877.						
Jan. 31,	1,043 50	939 15	65 74	7 46	678	73 20
Feb. 28,	2,438 79	2,194 92	153 64	16 70	651	170 34
Mar. 31,	2,389 50	2,150 55	150 53	15 60	620	166 13
Apr. 30,	6,049 20	5,444 28	381 09	37 46	590	418 55
May 31,	2,852 50	2,567 25	179 70	16 77	559	196 47
June 30,	2,665 65	2,399 09	167 93	14 83	529	182 76
July 31,	2,407 00	2,166 30	151 64	12 61	498	164 25
Aug. 31,	3,425 00	3,082 50	215 77	16 81	467	232 58
Sept. 30,	10,480 70	9,432 63	660 28	48 07	437	708 35
Oct. 31,	7,919 10	7,127 19	498 90	33 79	406	532 69
Nov. 30,	5,208 61	4,768 75	333 81	20 93	376	354 74
Dec. 31,	3,511 25	3,160 13	221 20	12 70	345	233 90
1878.						
Jan. 31,	2,405 53	2,164 98	151 54	7 93	313	159 47
Feb. 28,	2,997 20	2,697 48	188 82	9 00	286	197 82
Mar. 31,	3,723 10	3,350 79	234 55	9 98	255	244 53
Apr. 30,	5,369 30	4,832 37	338 26	12 67	225	356 93
May 31,	5,961 90	5,365 72	375 60	12 17	194	387 77
June 30,	2,219 75	1,997 78	139 84	3 83	164	143 67
July 31,	2,108 49	1,897 65	132 83	2 78	133	135 61
Aug. 31,	4,528 30	4,075 47	285 28	4 84	102	290 12
Sept. 30,	5,904 70	5,314 23	371 99	4 46	72	376 45
Oct. 31,	9,132 65	8,219 39	575 35	3 93	41	579 28
Nov. 30,	5,099 38	4,589 45	321 26	59	11	321 85
				TOTAL,		$13,837 45

CR.

DATE.	AMOUNT.	DAYS.	INTEREST.	TOTAL.
1874.				
Nov. 14,	$ 37 59	1,487	$ 9 42	$ 47 01
Dec. 2,	50 23	1,469	12 24	62 47
1875.				
Jan. 6,	59 98	1,434	14 34	74 32
Feb. 1,	20 00	1,408	4 69	24 69
" 8,	24 71	1,401	5 84	30 55
Mar. 4,	50 00	1,377	11 48	61 48
" 10,	20 00	1,371	4 57	24 57
Apr. 10,	95 55	1,340	21 44	116 99
May 10,	118 49	1,310	25 98	144 47
June 3,	25 00	1,286	5 36	30 36
" 10,	68 86	1,279	14 71	83 57
July 10,	47 12	1,249	9 79	56 91
Aug. 20,	19 14	1,208	14 24	33 38
Sept. 10,	72 46	1,187	14 24	86 70
Oct. 14,	212 03	1,153	40 74	252 77
Nov. 15,	118 49	1,121	22 05	140 54
Dec. 22,	158 93	1,084	28 73	187 66
1876.				
Jan. 10,	160 85	1,065	28 58	189 43
Feb. 29,	69 53	1,015	11 84	81 37
Mar. 14,	50 00	1,001	8 34	58 34
" 27,	82 74	988	13 67	96 41
Apr. 10,	211 62	974	34 41	246 03
May 24,	183 07	930	28 37	211 44
June 20,	193 47	903	29 50	225 97
July 11,	170 91	882	25 14	196 05
Aug. 11,	112 17	851	15 89	128 06
Sept. 11,	118 54	820	16 26	134 80
Oct. 10,	120 00	790	15 80	135 80
" 11,	353 64	789	46 55	400 19
" 11,	140 09	789	18 41	158 50
" 18,	30 00	782	3 91	33 91
Nov. 9,	120 00	761	15 22	135 22
" 10,	221 31	760	27 97	249 28
Dec. 19,	226 05	720	27 12	253 17
1877.				
Jan. 13,	131 60	696	15 31	146 91
Feb. 10,	57 05	669	6 35	63 40
Mar. 10,	99 24	641	10 58	109 82
Apr. 10.	62 06	610	6 30	68 36
May 14,	152 40	576	14 56	166 96
" 11,	25 00	579	2 41	27 41
June 2,	25 00	556	2 32	27 32
" 12,	118 87	546	10 83	129 70
July 10,	114 65	519	9 95	124 60
Oct. 16,	618 51	421	43 43	661 94
Nov. 10,	324 35	396	21 38	345 73
Dec. 10,	214 78	366	13 11	227 89
1878.				
Jan. 10,	161 80	335	9 05	170 85
Feb. 11,	96 74	302	4 88	101 62
Mar. 11,	85 68	275	3 94	89 62
Apr. 10,	70 00	245	2 86	72 86
" 12,	116 29	243	4 69	121 98
			TOTAL,	$7,049 38

Total, Dr.,	$13,837 45
Total, Cr.,	7,049 38
	$6,788 07

UNITED STATES PATENT OFFICE.

ELISHA E. EVERITT, OF PHILADELPHIA, PENNSYLVANIA.

Improvement in Wardrobe-Bedsteads.

Specifications forming part of Letters Patent No. 148,940, dated March 24, 1874; application filed Nov. 19, 1873.

To all whom it may concern:

Be it known that I, ELISHA E. EVERITT, of Philadelphia, in the county of Philadelphia and State of Pennsylvania, have invented certain new and useful Improvements in Wardrobe-Bedsteads; and I do hereby declare the following to be a full, clear and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings, which form part of this specification, in which—

Figure 1 is a vertical longitudinal sectional view of the bed lowered for use. Fig. 2 is a side elevation of the bed raised. Fig. 3 is a front elevation of the same. Fig. 4 is a view of the open hinge-plate.

My invention has relation to that class of bedsteads which may be folded or raised to a vertical position, so as to assume the appearance of a wardrobe, or other similar upright article of furniture. The nature of my invention consists in the peculiar construction and combination of parts as hereinafter described.

Referring to the accompanying drawing, A is the head-board of the bed, having posts A′ A′, which also forms side brackets. B is a base-board, extending between the posts

A′ A′. To this base-board are hinged the side rails C C, the hinges *c′ c′* being open, as shown in Fig. 4, so as to allow said rails to rest upon the support B without injury to the pintles, and also to permit said rails to be easily detached when the bed is to be transported. Instead of hinging the side rails, as just described, to the baseboard B, they may be pivoted on the posts A′ A′ by means of suitable bolts passing through the latter, in which case the base-board B would be dispensed with, and the bottom board D made of such length as to almost touch the floor when the bed is in an upright position. E represents the foot-board, having posts E′, which form side-brackets. This foot-board E is hinged, as shown, to the end-rail F, being held in a vertical position, when the side-rails are extended horizontally, by means of a catch or hook, *e*.

When the bed is folded or raised, the foot-board E, with its posts E′, forms a top moulding or cornice for the imitation wardrobe, and also serves as a receptacle for the pillows and bedclothing.

In order to enable the bed to be packed in a very small compass, the side and end rails are held together by means of screws, as in ordinary bedsteads, and the bottom board D, which is held in place by the hooks *d′* and catches *d d*, may be formed in two pieces for the same purpose.

The bottom D and base-board B are designed to be ornamented, according to the article it is designed to imitate.

In order to prevent the bed from tilting forward when raised, brackets *b b* are placed upon the base-board B, and, as a further precaution, or in lieu of the brackets, the bed may be made fast to the floor by screws passing through suitable plates H.

To enable the bed to be easily raised, a suitable weight is to be attached to the end rail F′, said weight to be not quite heavy enough to counterpoise the movable part of the bed when clothed.

When a very high head-board is desired, the upper part

of the bottom rail is cut out sufficiently to let the head-board rest in the recess when the bed is elevated; and, in order to bring the ends of the side rails as near as possible to the head-board, the ends of said rails are rounded, as shown at *c c*. The edges of the head-board are rabbeted or formed with a recess *a*, so as to permit the side rails to enter therein when raised, coming thereby very close to the wall against which the head-board stands, and taking up less room than if the inner edges of said rails were flush with the front of the head-board. The bed is designed to be provided with a spring-mattress, or with slats, in the usual manner.

When the bed is raised, and until it is desired to lower it, it is secured in its upright position by means of hooks or catches engaging with the side rails and head-board.

What I claim as my invention is—

1. The folding wardrobe-bedstead comprising the head-board A, base-board B, side rails C, hinged to said base-board, removable bottom board D, hinged foot-board E, and side brackets A′ E′, all constructed and arranged substantially as and for the purpose specified.

2. The hinged foot-board E, in combination with the side brackets E′, raised above the side rails C, as shown, and forming, when the bed is elevated, the side guards for the pillows and bed-clothing, as and for the purpose specified.

In testimony that I claim the foregoing I have hereunto set my hand this 18th day of November, 1873.

ELISHA E. EVERITT.

Witnesses:

T. A. CONNOLLY,

EUGENE P. EADSON.

UNITED STATES PATENT OFFICE.

HARRISON W. CURTIS, OF PHILADELPHIA, PENNSYLVANIA, ASSIGNOR TO H. S. HALE, A. KILBURN, J. W. HALE, H. W. CURTIS, C. KILBURN, AND WARREN HALE, OF SAME PLACE.

Improvement in Wardrobe-Bedsteads.

Specification forming part of Letters Patent No. 159,908, dated February 16, 1875; application filed September 11, 1874.

To all whom it may concern:

Be it known that I, HARRISON W. CURTIS, of Philadelphia, Pennsylvania, have invented certain improvements in Crib-Bedsteads, of which the following is a specification:

The object of my invention is to make a crib with sides which can be readily elevated or depressed, and which will permit the turning up of the crib, so that it will assume the form of a wardrobe, and occupy but very little space.

This object I attain in the manner which I will now proceed to describe, reference being had to the accompanying drawings, in which—

Figure 1, Sheet 1, is a perspective view of the crib as it appears when elevated; Fig. 2, a vertical section; Fig. 3, Sheet 2, a side view of the crib as it appears when turned

down; and Fig. 4, Sheet 1, shows parts of my invention as applied to a permanent crib.

In Figs. 1, 2, and 3, A represents the head-board of the crib; B, the foot-board, and D the bed-frame, which is so hinged to the side pieces *a* of the head-board that it can be turned up against the latter, as shown in Figs. 1 and 2, while the foot-board is so hinged to the bed-frame that it can be adjusted to the position shown in Fig. 1 when the crib is turned up, thus forming an ornamental capital or finish for the imitation wardrobe, of which the bed-frame forms the body, and the side pieces, *a*, with a cross-piece, *b*, the base.

So far the crib is similar to the folding bedstead for which Letters Patent No. 148,940 were granted to Elisha E. Everett, the 24th day of March, 1874.

The bed-frame D is made in the form of a box, and is furnished with doors *d d*, which, when the crib is turned up, occupy a position similar to those of a small wardrobe, the interior of the frame forming a receptacle for clothes, which can be hung on pegs, the latter extending nearly to the doors, so that when the crib is turned down the clothes cannot escape from the said pegs.

The main feature of my invention, however, is the combination, with the crib, of movable sides, consisting of parallel slats *x* and a rail *m*, connected together by parallel bars *y*, the lower ends of which, as shown in Fig. 3, are jointed to the edge of the bed-frame, and the upper ends of the said rail *m*. When the crib is turned down, as in Fig. 3, the sides may be expanded or elevated and the upper rail *m* connected, by any suitable fastenings, at one end to the head-board A, and at the opposite ends to the foot-board.

In many cases it is advisable to depress that side of a crib which is nearest to a bed, so that the occupant of the latter can gain ready access to the infant in the crib, and the manner of constructing the sides of the crib affords every facility for being thus depressed, as occasion may require. The manner of constructing the sides also permits them to

be contracted into a narrow space, as shown in Fig. 2, so that the bed-frame, with its sides, occupies but little space when turned up. The sides composed of slats, hinged together and to the frame, in the manner described, can be advantageously combined with an ordinary permanent crib, as shown in Fig. 4.

I claim as my invention—

1. The combination of the frame and the adjustable head and foot boards of a warbrobe-crib, and sides consisting of slats joined to each other and to the frame, all as set forth.

2. The combination, with a hinged bed-frame, D, of sides, composed of longitudinal slats and cross-bars, and a rail, *m*, arranged for attachment to the foot and head boards of the crib, as specified.

In witness whereof I have signed my name to this specification in the presence of two subscribing witnesses.

HARRISON W. CURTIS.

Witnesses:

HUBERT HOWSON,
HARRY SMITH.

UNITED STATES PATENT OFFICE.

CHENEY KILBURN, OF PHILADELPHIA, PENNSYLVANIA, ASSIGNOR TO HIMSELF, HENRY S. HALE, ARTEMUS KILBURN, J. WARREN HALE, AND WARREN HALE, OF SAME PLACE.

Improvement in Wardrobe-Bedsteads.

Specification forming part of Letters Patent No. 181,450, dated August 22, 1876; application filed June 28, 1876.

To all whom it may concern:

Be it known that I, CHENEY KILBURN, of Philadelphia, Pennsylvania, have invented certain Improvements in Wardrobe-Bedsteads, of which the following is a specification:

My invention relates to certain improvements in the folding bedstead for which Letters Patents No. 148,940 were granted to E. E. Everitt on March 24, 1874; and the objects of my improvements are to afford facilities for the raising and lowering of the bed-frame and foot-board, and to make proper provision for the support of the pillows.

In the accompanying drawing, Figure 1 is a vertical section of my improved folding bedstead in an elevated position; Fig. 2, the same when depressed; Fig. 3, a sectional plan of part of the bedstead, and Fig. 4 a section on line 1 2.

A is the stationary portion of the bedstead, consisting of the back *a* and hollow base *b*, and in the latter is formed a receptacle, *d*. To a shaft, *x*, in the base *b* is hinged the movable portion of the bedstead, consisting of the box-like

bed-frame B and the foot-board D, the latter being hinged at *y* to the end of the bed-frame, and having legs *e*.

When the movable portion of the structure is elevated the bed-frame forms the front and sides, and the foot-board the entablature, of a cabinet, which may be made in the form of a wardrobe, as described in the above-mentioned patent of Everitt.

To the inside of each of the side bars *f f'* of the bed-frame is attached an arm, G, and each arm has a segmental recess, *i*, the center of which coincides with the center of the shaft *x*, and into the rcesses of the segments are introduced the ends of a series of bars, H, which together form a counter-weight for the movable portion of the structure, on which, however, the weight has the differential effect which I will proceed to explain.

When the bed-frame is depressed, as shown in Fig. 2, the weight is partly above and partly below a horizontal line drawn through the center of the pivot *x*, so that the weight exerts it full, or nearly full, effect on the frame. Hence, a very slight effort is required to elevate the outer end of the movable portion of the structure. As the latter is raised, however, the effect of the weight decreases, and continues to decrease until the bed-frame is raised to the position shown in Fig. 1, when there is a slight preponderance of the weight to the right of a vertical line drawn through the center of the pivot *x*, to maintain the said bed-frame in a vertical position.

The advantages of this manner of arranging the weight are as follows: First, in commencing to raise the movable portion of the structure a very slight effort is required; second, when this portion of the structure is nearly elevated there is no fear of its being brought into violent contact with the permanent portion of the structure, as the effect of the weight is nearly spent by the time the bed-frame has been folded up; third, very little effort is required to pull down the movable portion of the structure, as the weight in

the first instance presents but slight resistance; fourth, the movable portion of the structure, on being pulled down, cannot be brought into too violent contact with the floor, for the effect of the counter-weight increases as this portion of the structure descends.

The weight may be made in one piece; but I prefer to make it of a number of bars, as they are easy to handle, and can be more readily applied than a single weight.

When the movable portion of the structure is folded down, as shown in Fig. 2, there is an open space communicating with the interior of the base of the permanent portion of the structure. This opening I cover with an apron, J, the rear edge of which is fastened to the head-board *a*, and the two front corners to the opposite sides *f f'* of the bed-frame; or the front edge of the apron may be secured to the ticking of the mattress, so that when the latter is depressed the apron will serve as a support for the pillows. The apron presents no obstacle to the turning up of the bed-frame.

I claim as my invention, and as an improvement on the Everitt bedstead—

1. The combination, in a folding bedstead, of the pivoted and movable portion B D, with a weight, the greater portion of which is above, and the lesser portion below, a horizontal line drawn through the center of the pivot *x* when the bed-frame is depressed, all as set forth.

2. The combination of the bed-frame with the arms G, their segmental recesses, and the weighting-bars H, as specified.

3. The apron J, combined with the head-board, substantially as set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

CHENEY KILBURN.

Witnesses:

HARRY HOWSON, JR.,

HURERT HOWSON.

UNITED STATES PATENT OFFICE.

SAMUEL N. NEWCOMB, OF PHILADELPHIA, PENNSYLVANIA, ASSIGNOR TO HENRY S. HALE, ARTEMAS KILBURN, J. W. HALE, CHENEY KILBURN, AND WARREN HALE, OF SAME PLACE.

Improvement in Wardrobe-Bedstead.

Specification forming part of Letters Patent No. 182,465, dated Sept. 19, 1876; application filed August 18, 1875.

To all whom it may concern:

Be it known that I, SAMUEL N. NEWCOMB, of Philadelphia, Pennsylvania, have invented a certain Improvement in Folding Bedsteads, of which the following is a specification:

My invention relates to an improvement in the folding bedstead for which Letters Patent No. 148,940 were granted to E. E. Everitt March 24, 1874; and the object of my invention is to render the foot-board self-adjusting to the different positions which it has to assume.

In the accompanying drawing, Figures 1 and 2 represent side views of the bedstead in different positions, with my improvement.

A is the head of the bedstead; B, the foot-board, and D the bed-frame, which is hinged to the head at *a*, and to the foot-board at *b*, so that the frame can be turned up against the head, and the foot-board turned to a position in which it will form a finish for the wardrobe or other article of furniture which the turned-up bedstead is made to represent, all

as described in the said patent of E. E. Everitt. In the patented bedstead, however, it was necessary to adjust the foot-board and lock it when the bed-frame was turned down, as in Fig. 1, and also to adjust it when the bed-frame was elevated.

In order to dispense with the necessity of thus adjusting the foot-board, I arrange on one or both sides of the bed-frame a bar, H, connected at one end to a pin, *m*, on the head A, and at the other end to a pin, *n*, on the foot-board, these pins *m* and *n* bearing such relation to the hinges *a* and *b* that the rod H will always cause the foot-board to turn on its hinge *b* as the bed-frame is elevated or depressed, and to adjust and retain the foot-board in its proper position, whether it serves to support the bed-frame as in Fig. 1, or as an ornamental finish for the top of an imitation wardrobe when the bed-frame is elevated.

I claim as my invention—

The combination of the head A, bed-frame D, and foot board B of a folding bedstead, with the bar or bars H, substantially as and for the purpose set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

SAMUEL N. NEWCOMB.

Witnesses:

HUBERT HOWSON,
HARRY SMITH.

UNITED STATES PATENT OFFICE.

ANDREW STARK, OF TOPEKA, KANSAS.

Improvement in Wardrobe-Bedsteads.

Specification forming part of Letters Patent No. 49,568, dated August 22, 1865; Reissue No. 8,161, dated April 9, 1878; application filed March 14, 1878.

To all whom it may concern:

Be it known that I, ANDREW STARK, of Topeka, in the county of Shawnee and State of Kansas, have invented new and useful Improvements in Convertible or Wardrobe Bedsteads, of which the following is a specification:

This invention relates to that class of bedsteads in which the bed is hinged to a frame, which permits it to be extended, resting upon the floor, so as to serve the functions of a bedstead, but which may be turned into a vertical position, thus concealing the mattress and bedding, and giving to the article a neat, tasty, and pleasing exterior.

In the annexed drawings, making a part of this specification, Figure 1 is a front elevation, showing the bedstead as turned up and presenting the external appearance of a wardrobe. Fig. 2 is a side elevation, showing the bedstead as extended, resting upon the floor, and ready to serve the purposes of a bed.

The same letters are employed in both figures in the indication of identical parts.

a a in the drawings represent the bed portion of the bedstead, made in the form of a square box, in which the mattress and other bedding are inserted in the usual manner;

b, the head-board, made in any suitable shape, size and material, to the lower portion of which, and projecting from the inner side thereof, a wide base, *c f*, is attached, made hollow, and ornamented upon its exterior with molding beads, or with trimmings or ornaments of any suitable kind and style.

The width of the space within the base is equal, or nearly so, to the thickness of the bed portion *a*, which is secured to the inner edge of the upright portion of the base by hinges *g g*, so that it can be turned upon the same into a vertical position, as represented, Fig. 1, bringing the head-board against the bedding, where it can be secured, if desired, by hooks or in any other proper manner, the lower end of the bed portion entering the hollow base *c*. The base *c* is extended on the sides by brackets *c'*, which are fastened to the head-board *b*, and serve as braces to strengthen the head-board, and also to conceal the folding bed, which, when raised, folds in between these brackets.

h is the foot-board, formed in two parts, *l* and *m*, hinged together at *n n*. To the lower portion *m* is attached at each end a side piece, *o*, the portion *m* and side pieces *o o* being made of an ornamental shape, as represented in the drawing. The lower part *m* of the foot-board is hinged to the foot of the bed portion *a a*, and when the bedstead has been turned up into a vertical position, as described, is swung down against the outer portion *p* of the same, and its upper part *l* over and upon the upper end of the bed portion, as seen in Fig. 1, thus forming a neat and tasty top piece therefor, forming the cornice for the apparent wardrobe both on the front and sides thereof, the foot-piece being extended around the angles of the foot of the bed, so as to give this finish to the top when the bed is turned up.

The side pieces *r r* of the bed portion *a a* are divided in the direction of their length into parts *s* and *t*, hinged together at *u u*, the upper one, *s*, of which, when the bedstead is in a horizontal position, is turned down and

upon the upper ends of the base portion *c* of head-board and side pieces *o o* of foot-board, and securely holding them in their proper position, and preventing them from overturning, which would occur were the side pieces not so constructed, or were there no arrangement of devices provided for holding the same in position, as described.

In bedsteads of this class heretofore known the body of the wardrobe or other article of furniture intended to be represented by the bedstead when folded up has been represented by the frame and cornice attached to that part of the structure which represented the head-board of the bed when extended, which folded under the cornice into the space. In consequence, when the bed was extended, the appearance of the head-board with its cornice has been heavy, and, being necessarily very high, in order that it might receive the bed, it lacked the graceful proportions which are demanded by people of taste in furnishing their houses.

My invention is distinguished from all previously known convertible beds of this class in this, that in mine the head-board, when the bed is elevated, is entirely concealed, (except upon the sides,) and, as it does not carry the cornice may be made shorter than the bed and have whatever finish and proportions may be desired.

In other cases the foot-piece has been hinged to the bed frame or box, and made to turn as the bed was raised, so as to form part of the finish of the front of the apparent wardrobe; but my invention is distinguished from this, that the foot-piece, when raised, instead of forming part of the front under the cornice, as in such former cases, forms the entire cornice, all parts of the front of the apparent wardrobe which are visible when the bed is raised above the base belonging to the swinging part of the structure. As a consequence of this construction, when the bed is down, the foot-piece, as well as the head-piece, may be made of any desired form or proportion, and consequently a natural and

ordinary appearance is given to the bedstead when extended for use.

In other beds of this class the cornice has been supported, in part, by side pieces of the frame of the head part of the bed, forming a casing or open box, into which the bed is folded. My invention is distinguished also from these in this, that I make the cornice part of the foot-piece of the folding bed. The ends of the apparent wardrobe are formed by the ends of the foot-piece, forming the cornice, the sides of the bed-box itself, which is exposed to view, the side brackets of the base, which brace the head-piece, but are not connected with the cornice, and the ends of the base.

I have spoken of the parts which are respectively represented as head and foot pieces; but it is not my design to employ these as terms of limitation, for they may be reversed, and either may be head or foot pieces.

I am aware that in English Patent No. 2,310, of 1853, a convertible bed is found in which both the front and ends of the cornice are formed by a piece hinged to the foot of the bed, so that, while supporting the foot when the bed is turned down, it can be turned up above the foot when the bed is raised into its vertical position.

It will be observed that this differs from my construction, among others, in the following particulars: First, the foot-board proper and the foot-piece forming the legs are not connected, and cannot be, as the foot-board folds down onto the bed when it is arranged to be raised; second, as the foot-piece is turned up, it necessarily adds its entire height to that of the bed, while mine adds little or nothing; third, because both faces of the foot-piece in that case require to be finished, as one surface is exposed when the legs are turned down, and the opposite face when they are turned up to form a cornice.

What I claim as my invention, and desire to secure by Letters Patent, is—

1. In a convertible wardrobe-bedstead, the combination of

a permanent head-board *b*, and box or base *c f*, attached at the bottom thereof, and receiving into it the lower end of the bed when raised, the bed hinged to said base, and foot-piece hinged thereto in such manner that when the bed is folded up the foot-piece can be turned down so as to form the entire cornice or top of the apparent wardrobe, substantially as set forth.

2. In a convertible or wardrobe-bedstead, in combination with the folding-bed, a downwardly-folding foot-piece hinged thereto, which is extended around the corners of the bed, so as to form, when the bed is folded up and the foot-piece is turned down, the entire cornice on both the front and two ends of the apparent wardrobe, substantially as set forth.

3. In a convertible or wardrobe bedstead, in combination with the head-board *b* and box *c*, the side-brackets *c'*, forming a support for the head-piece, and also, in combination with the sides of the bed-box and end of the folding foot-piece, forming the sides of the apparent wardrobe, substantially as set forth.

4. The combination of the hinged bed portion *a*, hollow base *c*, the two-part foot-boards *l m*, and the double hinged side-pieces *s t*, when arranged in the manner and for the purposes herein described.

In testimony whereof I hereby sign my name this 27th day of February, 1878.

ANDREW STARK.

Witnesses:

OWEN D. ROBERTS,

J. B. KILBURN.

UNITED STATES PATENT OFFICE.

HENRY S. HALE, OF PHILADELPHIA, PENNSYLVANIA.

Improvement in Wardrobe-Bedsteads.

Specification forming part of Letters Patent No. 210,777, dated December 10, 1878; application filed September 3, 1877.

To all whom it may concern:

Be it known, that I, HENRY S. HALE, of Philadelphia, Pennsylvania, have invented a new and useful Improvement in Cabinet-Bedsteads, of which the following is a specification:

My invention consists of certain improvements in that class of bedsteads which can be converted into a representation of a wardrobe, cabinet, book-case, etc., the said improvements being too fully described hereinafter to need preliminary explanation.

In the accompanying drawing, Figure 1 is a vertical section of the folding bedstead as it appears when the movable frame is turned up, the said frame when turned down being shown by dotted lines; Fig. 2, an enlarged view of part of Fig. 1; Fig. 3, a perspective view, drawn to a reduced scale, and showing the manner of combining a desk with the bedstead; Fig. 4, a plan view of the lower portion of the permanent frame; Fig. 5, a detail view of part of one of the grooved segments for counter-balance weights, with the detachable pillow-board; Fig. 6, part of the bed-bottom and mode of measuring the same; Fig. 7, a view showing the

manner of securing the mattress; Fig. 8, the supporting-frame for the outer end of the movable frame, with the detachable portion of the tail-board; and Fig. 9, a diagram illustrating the operation of one feature of my invention.

A is the fixed and B the movable frame of the bedstead, the two being hinged together by the pivot-shaft *a*. The fixed or permanent frame consists of the two posts *e e*, the head-board, *b*, which connects the two posts together, and the side pieces *d d*, the lower portions of which are continued outward to form the base A′, of which *f* is the front.

The movable frame consists of the bottom-board, *h*, the opposite side rails, *i*, and the tail-board, which is made in two parts—namely, the lower portion, *m*, secured to the ends of the side rails, and the detachable portion *n*, referred to hereinafter.

A frame, D, is hinged at *x* to the tail-board, this frame having legs, *p p*, for supporting the outer end of the movable frame when the latter has been turned down.

A longitudinal slot, *q*, is formed in the rear edge of the bottom board, *h*, as best shown in Fig. 2, the pivot-shaft *a*, which is fixed to the permanent frame, passing through this slot, so as to permit the entire movable frame to be elevated under the circumstances explained hereinafter.

If desired, pivot-pins may be secured to the movable frame, and adapted to vertical slots in the permanent frame, for the same purpose of permitting the said movable frame to be elevated.

To the rear end of each end rail *i* is pivoted a roller, *j*, the peripheries of the two rollers bearing on rails *k* in the interior of the base A′ of the permanent frame. When the movable frame is turned up these rollers will come in contact with the rails *k*, and as the upward turning of the frame is continued it will be elevated. I generally restrict this arrangement to the largest and heaviest class of bedsteads for the following reasons: When the movable frame is heavy it is important that the counter-balance weights should be

arranged as far from the fulcrum or pivot shaft as possible; but if the movable frame be pivoted in the usual manner to the fixed frame, the distance of the weights from the pivot must be determined by the distance of the latter from the floor, with which the weights must not come in contact.

The desired height of the movable frame (when turned down) from the floor restricts the distance between the pivot and the weights; but if the movable frame can be raised vertically as it is turned up, the weights can clear the floor; hence an advantageous length of leverage can be obtained without making the arrangement of the movable frame (when the latter is turned down) at an unnecessary altitude from the floor. This may be better explained in connection with the diagram, Fig. 9, in which 2 represents the floor, 3 the wall against which the bedstead is placed, *a* being the pivot-shaft, *h* the bottom of the movable frame, placed at a convenient height above the floor, and *h'* the weighted lever for counter-balancing the frame. The longer this lever is the better; hence it is made to extend nearly to the wall; but in turning up the movable frame the weight would strike the floor unless the said frame, while being turned up, was caused to rise by the contact of the rollers *j* with the rails *k*, as described above.

In ordinary folding bedsteads it is usual to make the side rails of such a depth that their upper edges are on a level, or thereabout, with the top of the mattress—a plan objectionable to those getting in or out of bed. To remedy this defect, I cut down or recess the side rails from the top, so as to expose the edges of the mattress; and I make the side pieces *d* of the frame of such a form that, when the movable frame has been turned up, the portions of the said side rails which are recessed or cut away shall be concealed by the said side pieces, as shown in the perspective view, Fig. 3.

The counter-balance weights consist of bars, the ends of which fit into grooved segments *t*, attached to the rear ends of the side rails of the movable frame.

It will be seen on referring to the plan view, Fig. 4, of the lower portion of the permanent frame, that each segment is made in two parts connected together by and forming a part of a horizontal bar, *t'*, some of the counter-balancing-bars *y* being consequently longer than the others. By constructing the segments in this manner, spaces *g* are presented within the base of the permanent frame for receiving casters with rollers of sufficient size to permit the structure to be moved from place to place with ease, one of these casters being indicated by dotted lines in Fig. 4.

From the upper edge of one segment *t* to that of the other segment extends a board H, which serves as a backing for the mattress to bear against, this rest being made detachable, so as to permit the introduction of the counter-balancing-bars into and their withdrawal from the grooves of the segments.

Two or more springs, S, connect the rear end of the movable frame to a cross-bar on the permanent frame, as shown in Fig. 1, these springs being such that they will be stretched both when the movable frame is turned down and when it is turned up; hence the springs must serve to prevent the too-sudden contact of the movable frame with the floor when it is turned down and its too-sudden contact with the permanent frame when it is turned up.

The bed-bottom consists of longitudinal slats I, secured to cross-rails J, as shown in Fig. 6, and to the ends of these rails are secured slotted plates K, which fit under the heads of pins or screws L, secured to blocks on the inside of the rails *i* of the movable frame, so that when the latter is turned up the bed-bottom cannot be displaced.

In order to retain the mattress under like circumstances, loops N, secured to the outer end of the bed-bottom, are connected to buttons P, or other suitable fastenings, on the edge of the mattress, as shown in Fig. 7.

Prior to turning up the movable frame, the detachable upper portion, *n*, of the tail-board should be removed and

adjusted to the frame D, when the two combined will form an appropriate upper finish for the cabinet, which the bedstead represents when the movable frame has been turned up. (See Fig. 3.)

In order that the structure may represent a combined cabinet and writing-desk, I make the desk R with ends and back arranged to fit snugly to the permanent frame, the lower portion of which, when used in connection with the desk, may be free from expensive ornamentation.

The desk itself may be constructed for writing purposes, or its interior may be arranged as a wash-stand, as described in a separate application for a patent, or the desk may be so constructed that it can be converted into a crib, as described in another application.

I do not desire to claim, broadly, the elevation of the movable frame in the permanent frame, as said movable frame is turned up; but

I claim as my invention—

1. In a folding bedstead, the permanent and movable frames, pivoted to each other by means of a shaft or pins adapted to a slot or slots in one or other of the frames, as described, in combination with rollers *j*, carried by the movable frame, separate from the pivoting devices, and adapted to rails on the permanent frame, all substantially as set forth.

2. The combination of the grooved segments with a detachable board, H, as described.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

HENRY S HALE.

Witnesses:

HARRY A. CRAWFORD,
HARRY SMITH.